

**NOMINATIONS OF SAMUEL W. BODMAN TO BE
DEPUTY SECRETARY OF COMMERCE (DOC);
ELLEN G. ENGLEMAN TO BE
ADMINISTRATOR OF THE RESEARCH AND
SPECIAL PROGRAMS ADMINISTRATION AT THE
DEPARTMENT OF TRANSPORTATION (DOT);
JON ALLAN RUTTER TO BE ADMINISTRATOR
OF THE FEDERAL RAILROAD ADMINISTRATION
(FRA); AND KIRK K. VAN TINE TO BE GENERAL
COUNSEL, DEPARTMENT OF TRANSPORTATION
(DOT)**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JUNE 26, 2001

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

87-007 PDF

WASHINGTON : 2004

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COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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TRANSPORTATION (DOT)**

TUESDAY, JUNE 26, 2001

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:33 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings, Chairman of the Committee, presiding.

**OPENING STATEMENT OF ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA**

The CHAIRMAN. The Committee will please come to order. We are pleased this morning to have Mr. Sam Bodman to be the Deputy Secretary of Commerce. We have our distinguished Secretary here. Please come and have a seat with your Deputy. You are going to be working closely with him. We will not ask you any questions. [The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

Nomination of Samuel W. Bodman

Mr. Samuel W. Bodman, III is the nominee for Deputy Secretary of Commerce. He is joined today by his wife, Dianne Bodman, and his stepson Terry Barbar. Mr. Bodman is a chemical engineer by training and has had a long, distinguished career in business, most recently as Chairman and Chief Executive Officer of the Cabot Corporation.

I enjoyed meeting Mr. Bodman, and, like Secretary of Commerce Don Evans, I am expecting great things of this nominee. The Secretary has said more than once that he is anxious to have you at the Department. He is expecting you to play a major role in two agencies that are very important to me, the National Oceanic and

Atmospheric Administration (NOAA) and the National Institute of Standards and Technology (NIST).

With regard to NIST, as you know, Mr. Bodman, I am looking forward to working with you and the Secretary on making improvements to the Advanced Technology Program for fiscal year 2002 and beyond. But make no mistake, the ATP contracts with firms, on a cost-shared basis, for long-term research to develop new breakthrough technologies with broad economic promise—and it's working. No matter what changes are made for the future, I hope that, if confirmed, you can ensure that the foolishness stops and that the Department begins to issue the fiscal year 2001 awards in a timely manner.

NOAA was just provided with its largest budget in history, so, as the person who is responsible for the day-to-day operations of the Department, you will have at your disposal the appropriate resources for improving the management capabilities of NOAA. This Committee will be closely following the new Administration on its plans for improving the management and integration of the various NOAA line offices, and strongly believes that NOAA urgently needs high level focus to improve upon its mission to conserve our Nation's coastal and marine resources. One of the critical needs is modernizing our management and stewardship of living marine resources and reducing the need for fisheries-related litigation, especially suits brought under the Endangered Species Act and the National Environmental Policy Act. It is my strong desire, that if nominated, you will provide the leadership and support necessary to improve the management of NOAA.

Finally, I also wanted to mention the Department's role in enforcing our Nation's unfair trade laws. I am confident that you will apply these rules vigorously.

Nominations of Kirk Van Tine, Allan Rutter and Ellen Engleman

The Department of Transportation performs many vital national functions in promoting safe and efficient travel. From the safety functions of providing oversight of our highways, airways, waterways, and railroad network, to promoting our transportation system so that all U.S. citizens can travel efficiently and economically, the Department of Transportation has many important responsibilities.

The role of the General Counsel at DOT is one of stewardship, and provides the agency with legal representation and advice, as well as the important function of monitoring and approving regulations implementing the laws passed by Congress. Mr. Kirk Van Tine has been nominated for the position of General Counsel of the Department of Transportation. He is a graduate of the U.S. Naval Academy, and served as a submariner. In addition he graduated from the University of Virginia School of Law with distinction. Before hearing from the nominee I would like to comment on a couple of issues of particular concern to me, and would hope that you, Mr. Van Tine could help move these issues forward at the Department.

In aviation, DOT is the protector of the public interest when it comes to aviation competition. You get to look at the broad picture and make decisions. DOT has an enormous amount of underutilized authority to look at competition issues. Section 155 of AIR 21 mandates that airports focus on how to increase competition. DOT's authority to review "unfair methods of competition," a broader standard than the traditional antitrust laws, gives you the ability to issue predatory pricing guidelines and take enforcement action. DOT also has authority to review alliances "or any other cooperative working arrangement" involving two carriers that affects 15 percent of the industry. You have got to use this authority. You have got to focus on the lack of competition in the airline industry. We have a choice—either force more competition, as S. 415 would do, or somehow prevent monopoly pricing.

I am also concerned about the state of security at our seaports. When we move passengers and freight through airports the FAA has implemented a system of security in order to protect the public, however, when cargo or freight moves through a seaport we have no Federal system in place to try to protect the population from threats of terrorism, drugs, or criminal acts. I know that the Coast Guard, which is already overextended, has been working to come up with policies to try to address these issues. I intend to introduce legislation to create a security program at our sea borders and, I would hope that, if confirmed, you could help us address these issues.

Today we will also hear about the nomination of Allan Rutter, of Texas, to be Administrator of the Federal Railroad Administration (FRA) within the Department of Transportation. This position is an important one, and I am pleased to have before us a nominee of evident professional qualifications and experience with rail transportation policy issues.

If confirmed as FRA Administrator, Mr. Rutter will be responsible for administering and enforcing the railroad safety laws of the United States. The FRA plays a critical role in implementing Federal policies intended to ensure the vitality and

economic health of the Nation's railroads, rail labor, and the railroad supply industry. In addition, if confirmed, Mr. Rutter will be confronted with decisions regarding many important rail issues, including the appropriate role and mission of the National Railroad Passenger Corporation (Amtrak), as well as proposals for an increased Federal role in promoting the development of new high-speed ground transportation systems in this country. These challenges will require significant effort and commitment on the part of the FRA Administrator. Mr. Rutter brings strong experience in rail transportation and working with different groups at the State level to the tasks which lie ahead at the FRA.

The Committee will also be hearing from Ellen Engleman of Indiana, to be Administrator of the Research and Special Programs Administration (RSPA) within the Department of Transportation. RSPA is one of the Department's most important components and one of the youngest. It was established in 1977 and is responsible for hazardous materials transportation and pipeline safety, transportation emergency preparedness, safety training, multi-modal transportation research and development activities, and collection and dissemination of air carrier economic data. Two of the more important offices within RSPA are the Office of Hazardous Materials Safety and the Office of Pipeline Safety, which establishes and provides for compliance with standards that assure public safety and environmental protection in the transportation of gas and hazardous liquids by pipeline.

In the too recent past there have been several pipeline accidents across the Nation which have resulted in loss of life and serious property damage. In fact, the Office of Pipeline Safety recently proposed the largest ever fine against a natural gas pipeline carrier last week. These accidents call for a vigorous response on the part of RSPA, and a focus on improving safety. The nominee for the position of RSPA Administrator is Ellen Engleman, and she is coming to us with good amount of experience in the business arena. I am pleased to welcome Ms. Engleman, and all of the DOT nominees to this Committee, and look forward to hearing from them.

[The prepared statement of Senator Rockefeller follows:]

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA

Nominations of Bodman, Rutter, Van Tine, and Engleman.

Thank you Mr. Chairman. I appreciate the opportunity to make a brief statement on the nominations of these four highly qualified individuals.

DEPUTY SECRETARY OF COMMERCE

As he assumes the role of Deputy Secretary of Commerce, I expect to have a close working relationship with Mr. Bodman on a variety of science and technology programs. I was impressed by his strong technology and R&D background, and I believe that his nomination bodes well for many programs, such as EPSCoT and the research "doubling" bill, that are Commerce Department priorities for me and the nation.

As you know, I have more than a passing interest in the state of the U.S. steel industry. I look forward to working with Mr. Bodman on steel issues, particularly in dealing with the root causes of the current steel crisis, namely foreign over-capacity and market-distorting foreign subsidies.

ADMINISTRATOR OF THE FEDERAL RAILROAD ADMINISTRATION

I hope that Mr. Rutter will take the time early in his tenure as Administrator to examine the roles and responsibilities of the Surface Transportation Board and the FRA, to see where they overlap, and to see where he can be active in helping to create a more competitive freight rail market. As part of this analysis, I expect Mr. Rutter to carefully consider the current division of labor between the STB and the FRA, and to recommend to Congress changes that should be made to help the FRA to better perform its functions.

I don't know how closely Mr. Rutter monitored the work of the FRA under the Clinton Administration, but candidly, I believe it stayed too much on the sideline. I think the current State of the freight rail industry may be partly blamed on their unwillingness to engage on many of the issues in the industry.

In general, I look forward to working with Mr. Rutter on the full range of responsibilities as Administrator of the FRA.

GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION

I will look to the General Counsel at the Department of Transportation for assistance with my two major transportation priorities—aviation, especially small community service, and competition in the freight rail industry.

The General Counsel plays a crucial role in aviation policy matters. He will be involved in overseeing the FAA's safety authority and also directly involved in domestic and international aviation economic issues. For instance, I would expect Mr. Van Tine to clearly indicate that neither the Port Authority of New York and New Jersey, nor other airports have the authority to impose congestion pricing schemes.

I hope that Mr. Van Tine will work with Congress to improve air service to small communities. In the role of General Counsel, you will hear a lot of complaints about air service, prices and competition, and no comments will mean more to me than those about small and rural community service. There are two programs—the essential air service program and the small community pilot program—that can be a lifeline to small towns in need of air service.

Finally, DOT plays a crucial role in international aviation issues. I expect a litigator of Mr. Van Tine's talents to help the Secretary and the Administration make persuasive arguments about some recent unfortunate aviation decisions by the European Union on behalf of American industry and consumers.

In the area of railroads, as I have said, I will look to the Department of Transportation to take an active and supportive role in the efforts of this Congress to achieve true competition for both the shipper community and the railroads themselves.

ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DOT

Finally, I look forward to working with Ms. Engelman in her role as Administrator of RSPA. I trust that she will take her responsibility for ensuring the public safety very seriously. As the person in charge of a regulatory agency charged with securing the transportation of hazardous materials, she is no doubt aware that few people, perhaps no one, in government has a more pervasive day-to-day oversight of potential human health and environmental risks.

I hope that in this role she will always look to the public welfare first and foremost. I expect her to have constructive suggestions about how this Congress can improve the safety of the highways and pipelines that carry our most potentially dangerous chemicals.

Secretary EVANS. He does not need any help, believe me. He is fine.

The CHAIRMAN. Very good.

Mr. Bodman, would you like to present your wife, whom I believe is present, and any other members of your family?

**STATEMENT OF SAMUEL W. BODMAN, NOMINEE TO BE
DEPUTY SECRETARY OF COMMERCE**

Mr. BODMAN. Thank you, Mr. Chairman. My wife Diane is here and my stepson Perry Barber is here as well.

The CHAIRMAN. We welcome them to the Committee. We are glad to have them with you. We would be delighted to hear from you, sir.

Mr. BODMAN. Mr. Chairman, I have prepared a formal statement which I think has been distributed to the Committee.

The CHAIRMAN. It will be included in its entirety, and you may summarize it.

Mr. BODMAN. Thank you. I will not burden you with going through it. I would first want to tell you and the Committee Members how pleased I am to be here. I am particularly appreciative of the Committee holding this hearing so promptly following my nomination. I think my colleague Mr. Evans, prospective colleague Mr. Evans, is anxious to put me in harness, so I know he is very pleased and thankful that you have attended to this as promptly as you have, and I wanted to express my gratitude for that.

The overview that I would give you is quite brief. I am a chemical engineer. I went to Boston to be a student 40 years ago and I never left. I held four jobs while I was there. I was a teacher of engineering for 8 years and during that time I consulted what we believe to be the premium venture capital company of its type, so I spent many years engaged in that activity.

I left both jobs and went to what was then a small company called Fidelity. There were 50 people there at the time and we built it up to a company of some substance that is now, I believe, an important global investment manager. Then last, I spent the last 14 years as the manager of a globally deployed specialty chemical company where we worked hard on such issues as new product innovation and the sorts of things that I think will be on our agenda in the Commerce Department.

Secretary Evans asked me to consider this assignment and I have been very pleased to do so. I have been studying some of the records of the things that he agreed to undertake and I read his transcript of his testimony here and I just thought I would comment that the major thrust, as I read his comments to you were thrusts and major objectives of the Commerce Department that I certainly subscribe to.

First, we would view ourselves as a partner with the U.S. Trade Representative in expanding our trade agreements and making sure that we enforce all of our trade agreements that are in place.

Second, we are committed to managing all aspects of NOAA's portfolio of responsibilities. It is quite broad, as I know you are aware, and we will have particular focus on preserving our environment and of managing the regulatory environment of the various aspects of NOAA's portfolio of duties.

We intend to enhance America's technology leadership by fostering invention and creativity through a variety of the agencies that the Department is responsible for.

Last, we are committed to improving the performance and the operation of the Patent and Trademark Office, because without a well-managed intellectual property protection we really cannot have the kind of creativity and invention that we need.

So those are the four focuses that we expect to pursue, and I am very supportive of all of those. I would conclude by reiterating how pleased and proud I am to be here. I am very grateful to my family and my friends for their support in my undertaking this responsibility, and I am grateful again that the Committee has been as prompt as it has in undertaking this hearing.

With that, I thank you, sir.

[The prepared statement and biographical information of Mr. Bodman follow:]

PREPARED STATEMENT OF SAMUEL W. BODMAN, NOMINEE TO BE DEPUTY SECRETARY OF COMMERCE

Mr. Chairman, Senator McCain and Members of the Committee, I am very proud to have this opportunity to come before you today. I wish to thank the President for nominating me to this position. I also appreciate the courtesies shown to me during my visits with the Committee members last month. I want to summarize briefly my own professional background and how those experiences will affect my approach to the responsibilities of the Deputy Secretary of Commerce.

Having been born and raised in a small Illinois community, my education was entirely in the field of chemical engineering, and my final degree was the ScD completed at MIT in 1965. I taught chemical engineering for 8 years at MIT while also consulting with Boston's leading firm in the emerging field of venture capital. I left both jobs to join a then-fledgling investment firm called Fidelity. I spent 17 years there, served the last 10 years as president of Fidelity, and helped orchestrate the transformation of that tiny company into a powerful financial service enterprise.

Finally, for the past 14 years, I have served as Chief Executive Officer of Cabot Corporation, one of Boston's oldest industrial companies. Cabot is a specialty chemical manufacturer with forty manufacturing plants in twenty-five countries. During my tenure we transformed Cabot from a mundane old-line company into a technology driven business, and we achieved outstanding results for our shareowners, employees, and customers.

Through all these experiences I have come to revere the genius of the American free enterprise system. Our country's ability to create and commercialize new products is unmatched, and that ability has led to unsurpassed economic growth. On the other hand, our approach is far from perfect. We have environmental problems; we have not always implemented reciprocal free trade arrangements with our trading partners; and the fruits of America's economic system have not always been distributed among all members of our society in an effective manner. Confronting these problem while retaining our greatness and growing our economy will require that, in the words of Don Evans, "we create an environment in which the (entrepreneurial) spirit flourishes, an environment that promotes innovation, risk-taking, and equal opportunity." Secretary Evans has already described to you his priorities in managing the Department, and I subscribe to them:

1. First we expect to play an important role as a partner of the U.S. Trade Representative in expanding our trade agreements and enforcing all agreements that are in place;
2. We expect to manage effectively all aspects of NOAA's portfolio of responsibilities. Our environment must be preserved, and regulations must be based on sound science. I am well aware of President Bush's recent directive to the Commerce Department related to the U.S. Climate Change Research Initiative, and I am prepared to assist Secretary Evans in creating and carrying out that program;
3. We intend to enhance American technology leadership by fostering invention and creativity both in the government and the private sector. That leadership will be augmented by establishing appropriate industrial standards, by funding directly new research initiatives, and by the pragmatic administration of export controls over strategic technology; and
4. We will proactively seek continued improvement in the operations the Patent and Trademark Office. Creativity and invention cannot be institutionalized without adequate intellectual property protection.

I have been pleased and privileged to receive a wide range of comment and input during my personal visits with the Committee members. Those remarks have been highly educational and helpful—particularly for a person whose entire career has been in the private sector—and I am grateful for this. As we go forward, if I am fortunate enough to be confirmed by this Committee and the Senate, I pledge to make myself available to the Committee to personally deal with any and all challenges that confront us jointly in the future.

In closing, I would like to thank my family and friends, and most particularly my wife Diane, for their support of my decision to take on this assignment in public service. I am proud to be here. I am proud to serve this President, this Secretary of Commerce, and this Committee. Mostly, I am proud to be an American and to play a small role in serving our great country.

A. BIOGRAPHICAL INFORMATION

1. Name: Samuel W. Bodman.
2. Position to which nominated: Deputy Secretary of Commerce.
3. Date of nomination: March 16, 2001
4. Address: Not released to the public.
5. Date and place of birth: November 26, 1938, Chicago, Illinois.
6. Marital status: Married to Mary Diane Petrella Bodman.

7. Names and ages of children: Children: Elizabeth Bodman Mott, 38; Andrew Morgan Bodman, 36; Sarah Bodman Greenhill, 33; Stepchildren: Perry Oscar Barber III, 24; Caroline Killough Barber, 21.

8. Education: Secondary: Glenbard Township High School, Glen Ellyn, Illinois, 1952–1956; High School Diploma, June, 1956. College: Cornell University, Ithaca, New York, 1956–1961, B. Ch. E., June, 1961. Graduate School: Massachusetts Institute of Technology, Cambridge, Massachusetts, 1961–1965, Sc.D., June 1965.

9. Employment record: (a) Massachusetts Institute of Technology, Cambridge, MA, Professor of Chemical Engineering, 1964–1970. (b) American Research and Development Corporation; Boston, MA, Venture capital investing, Technical Director, 1964–1970. (c) Fidelity Investments, Boston, MA, Investment management, President and Chief Operating Officer, 1970–1986. (d) Cabot Corporation, Boston, MA, Diversified, global chemical manufacturer, Chairman and Chief Executive Officer, 1987–2001.

10. Government experience: In 1993 I served on an advisory committee to Governor William Weld on developing strategies for new business development in Massachusetts.

11. Business relationships: Directorships: Cabot Corporation; John Hancock Financial Services; Thermo Electron Corporation; Cabot Microelectronics Corporation; Cabot Oil and Gas Corporation; Security Capital Group, Inc.; Westvaco, Inc.; Apco Oil and Gas Company; Steam Engine Systems Corporation; Marathon Manufacturing Company; Haemonetics Corporation; Rixson-Firemark Corporation; Environmental Research & Technology Corporation; Mardrill, Inc.; Guardian Oil Company; Respiratory Care, Inc.; Continental Cablevision, Inc.; Skok Systems, Inc.; Well Tech, Inc.; Fidelity Group of Mutual Funds; FMR Corporation; Industrial Research, Inc.; Aspen Technology, Inc.; MCI New England, Inc.; France Drilling Company; Amata Gas, Inc.; Index Technology, Inc.

Trusteeships of Non-Profit Organizations: Massachusetts Institute of Technology; Isabella Stewart Gardner Museum; New England Aquarium; French Library and Cultural Center; MITRE Corporation; Babson College; Northeastern University; Massachusetts General Hospital Physicians Organization.

Employment: Massachusetts Institute of Technology, Professor of Chemical Engineering, 1964–1970; American Research and Development Corporation, Technical Director, 1964–1970; Fidelity Investments, President and Chief Operating Officer, 1970–1986; Cabot Corporation, Chairman and Chief Executive Officer, 1987–2001.

12. Memberships: Scholarly Memberships: American Academy of Arts and Sciences.

Social Memberships: The Country Club, Brookline, Massachusetts; Somerset Club, Boston, Massachusetts; West Chop Club, Martha's Vineyard, Massachusetts; Houston Country Club, Houston, Texas; Lost Tree Club, North Palm Beach, Florida; Coronado Club, Houston, Texas.

13. Political affiliations and activities: (a) List all offices with a political party which you have held or any public office for which you have been a candidate. None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. The Committee for Tim Wirth, 10/16/91, \$500; The Weld Committee, 09/16/93, \$1,000; The Menino Committee, 10/12/93, \$500; The Harshbarger Committee, 05/18/94, \$500; George W. Bush for Governor, 06/07/94, \$500; The Senator Chafee Committee, 10/04/94, \$500; No On 6&7 Committee, 10/14/94, \$2,500; Scott Harshbarger Committee, 03/25/96, \$500; Weld for Senate, 09/09/96, \$1,000; Harshbarger Committee, 01/20/98, \$500; RNC Presidential Trust, 06/15/00, \$20,000; Bush-Cheney Fund, 11/14/00, \$5,000.

14. Honors and awards: McMullen Scholar—Cornell University; Alfred P. Sloan Scholar—Cornell University; National Science Foundation Fellowship—Massachusetts Institute of Technology; Eastman Kodak Award—Massachusetts Institute of Technology; Tau Beta Pi—Cornell University.

15. Published writings: *The Industrial Practice of Chemical Process Design*, textbook published by MIT Press, 1968.

16. Speeches: None.

17. Selection: (a) Do you know why you were chosen for this nomination by the President? I was, recommended to the President by Secretary Donald Evans.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I believe my experience as a Professor of Chemical Engineering at MIT will provide an excellent background in dealing with the issues confronting NOAA, the Technology Administration, and the National Telecommunications and Information Administration. I believe my experience as a creator of new business opportunities

at American Research and Development Corporation, Fidelity Investments, and Cabot Corporation, will produce valuable insights in managing the Patent and Trademark Office. I believe my experiences in managing Fidelity's worldwide investment activities will allow me to contribute to the Department's understanding of global economics and international trade issues. These issues are central to the management of the Bureau of Export Administration, Economics and Statistics Administration, and the International Trade Administration. Finally, my recent experiences in managing Cabot Corporation's worldwide manufacturing enterprise—40 plants in 25 countries—will provide valuable perspective on the challenges and opportunities confronting American business leaders as they seek to participate in and benefit from global opportunities.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes, although certain employee benefit arrangements, including stock option grants established prior to my consideration for government service will continue pursuant to their terms as described in my Form SF278.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

I have no plans, commitments or agreements to pursue outside employment during my government service.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

I have no plans, commitments or agreements to resume any employment or affiliation with any corporation or organization.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No one has committed to employ me after my government service.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

If confirmed, I expect to serve a full term in this office—presumably until the next Presidential election.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

See Exhibits A and B attached, which are portions of exhibits to my Form SF278.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None, because my ethics agreement addresses all potential conflicts and creates a mechanism with which to deal with them.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I don't believe that I have had any business relationship or transaction during the past 10 years that in any way could cause a conflict of interest with respect to my responsibilities in the Department of Commerce.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

I have never engaged in any effort to influence any legislation or affect any public policy.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

I will consult with ethics officials in the Office of the General Counsel for the Department of Commerce to resolve any potential conflict of interest.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes, I do.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details.

I, personally, have not been the subject of any administrative agency proceeding or civil litigation at either Fidelity Investments or Cabot Corporation, my two principal employers for the past 30 years. However, both companies have, of course, been involved with a wide variety of litigation. I have asked the General Counsels of each company to summarize the most significant litigation issues confronting them at this time. Their responses are appended to this report (see Appendices A and B).

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

I know of no relevant additional information.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information?

I will ensure, to the best of my ability, that the Commerce Department complies with deadlines set by congressional committees.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosure?

I will ensure, to the best of my ability, that the Commerce Department will protect congressional witnesses and whistle blowers from reprisal.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee?

I will cooperate, to the best of my ability, in providing congressional committees with requested witnesses which will include technical experts and career employees.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

The Department of Commerce, as the voice of business within the Administration, has long been a leader in advocating and using market-oriented regulatory approaches in lieu of traditional command-and-control regulations when such approaches offer a better alternative. While not principally a regulatory agency, all regulations of the Department are designed and implemented to maximize societal benefits while placing the smallest possible burden on those being regulated.

The Deputy Secretary does not issue regulations and is not typically involved in the review of individual regulations issued by agencies of the Department. However, I intend to work closely with the General Counsel, who serves as the Regulatory Policy Officer for the Commerce Department and whose office does review each regulatory action to be issued by the Department, to ensure that I am briefed on and participate in the review of any controversial and/or important regulation. In this manner, I will ensure that regulations issued by the Department comply not only with the letter, but also with the spirit of the laws passed by Congress.

5. Describe your department/agency's current mission, major programs, and major operational objectives.

As the strategic plan of the Department sets out, the current mission of the Department of Commerce calls for the promotion of job creation and the improvement

of living standards for all Americans by growing the economy and contributing to technological advancement.

The Department's first strategic goal is to provide the information and framework to enhance economic performance. Programs supporting this goal are those to broaden the participation in economic growth, to promote growth and trade while protecting our security, and to support decisionmaking in our society.

The second strategic goal is to enhance innovation in our society. Programs supporting this goal are those to create technical knowledge and capability to protect intellectual property, and to provide infrastructure as America transitions to a digital economy.

Third, the Department seeks to learn more about our environment so as to permit sustainable economic growth. Related programs and objectives include the promotion of conservation of our natural resources and the understanding and prediction of natural phenomenon.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

I am willing to appear and testify before congressional committees as requested by those committees.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualify you for the position for which you have been nominated?

As mentioned in my answer to Question A. 17(b), I believe that my previous professional experience qualifies me to be Deputy Secretary of Commerce. I have taught engineering at MIT. I have invested venture capital in new companies for American Research and Fidelity. I have managed a global investment operation for Fidelity Investments which is responsible for organizing and deploying the assets of millions of American citizens. Last, for the past 14 years, I have reorganized and rebuilt the operating assets of Cabot Corporation. Cabot manages 40 manufacturing facilities in 25 countries. We have been a leader in managing our safety and environmental responsibilities, have developed a competent diverse organization with high morale and enthusiasm, and also have produced superior financial returns.

I believe that all of these experiences qualify me for a leadership position in the Commerce Department. My technical background should qualify me to deal with the environmental issues, the atmospheric and oceanic research, and the advanced technology that form a large part of the Department's portfolio. Having dealt with intellectual property issues as an academician, venture capitalist, and industrialist gives me unique perspective on the nation's copyright and patent functions. My work as an investment manager and industrialist helps me understand the global economy and deal with complex global trade issues.

All in all, I believe that these experiences provide me with a very broad background with which to confront the complex portfolio of activities in the Commerce Department.

2. Why do you wish to serve in the position for which you have been nominated?

I wish to serve in order to give something back to the United States of America. My family and I have benefited greatly by our participation in the American economy. If confirmed, I would view it a privilege to give something back to the U.S. commercial enterprise.

3. What goals have you established for your first 2 years in this position, if confirmed?

If confirmed, my first goal will be to develop an in-depth understanding of the people, the organizations, and the programs that constitute the Department of Commerce. Following that, I expect to devote most of my time in the first 2 years to working with those programs which are most directly related to the highest priorities of the Administration, of Congress, and of American business. For example, the Department should be a leading resource in studying and forecasting changes in our natural environment on earth—both oceanic and atmospheric. I expect to be active in encouraging these efforts and integrating them with work in other Departments and agencies. Many fast growing business segments depend on an effective patent system for their economic health. Understanding these needs and the Department's response to them will be a major objective. The management of our fisheries is a controversial subject and one for which scientific understanding is difficult to come by. A third objective will be to improve my understanding of this issue and the various approaches that are being used in managing our fisheries. Last, I have had considerable experience in international trade. I hope I can help expand the markets for American exports and investment.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

The only lacked skills of which I am aware are those that derive explicitly from serving in the Federal Government—those related to “knowing how the system works.” I believe that I will learn those skills as I pass through the confirmation process and in the first few months of my formal service.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society’s problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

I believe that the United States Government is charged with the responsibilities enumerated in the Constitution. These include providing for national defense and the safety of our citizens, carrying out foreign policy and maintaining an economic system conducive to the growth of our economy. Government is also responsible for encouraging American business in the global marketplace, supporting fundamental research to preserve the health and technical advancement of our society, managing our natural resources, and protecting our environment.

Specifically, with respect to activities in the Commerce Department, government should play the role of encouraging the great American economic system to operate at full efficiency to the benefit of all citizens. Government regulation should provide appropriate limits on private sector activity, but should be utilized sparingly. Environmental standards, workplace safety, anti-competitive behavior, proper financial reporting, and the like should be governed by appropriate regulatory standards. Such regulation should ensure the safety, fair treatment, and sense of well-being for all our citizens. I believe it also important that all our regulations be constructed and updated so as to recognize the tremendous changes that have occurred and are likely to occur in society at large. For example, many of our regulations and laws were developed at a time when American commerce dominated the world. With rare exception, such dominance no longer exists. Global competition dominates the world landscape, and U.S. regulations and law should recognize that. Similarly, the rapid speed of technological change is breathtaking in speed and grandeur. Legislation and regulation will be hard-pressed to keep pace, but every effort must be made to do so.

To the extent possible, regulation and law should remain removed from the creative process of inventing new technology and developing new products. The American genius for innovation and creativity is unsurpassed globally; regulation and legislation can only serve to stifle that process, and should be administered sparingly.

Lastly it must be noted that some of our citizens have not fully participated in America’s tremendous economic progress of the last decades. Government can and should play an active role in supporting, encouraging, educating, and liberating less fortunate members of our society. To the extent humanly possible, no one should be left behind. In this instance education is the key, and government should take the lead and provide the resources.

6. *In your own words*, please describe the agency’s current missions, major programs, and major operational objectives.

The Commerce Department, as I see it, has the most diverse set of missions of any department or agency in the Federal Government. In thinking about this question, I would bifurcate the missions of the various parts of the Department. First are those Administrations whose primary responsibility is professional and their tasks require the delivery of the highest quality of service to the American public. Second are those Administrations that are primarily advocates for the development, expansion, and success of American business both at home and abroad. The following paragraphs deal with each of these mission categories.

Most of the employees and the majority of the Department’s budget are devoted to Administrations which are charged with the responsibility of delivery of professional services. In my mind, these include NOAA, Patent and Trademark Office, Technology Administration, and the Economics and Statistics Administration. All of these organizations are charged with the responsibility of collecting data, distilling and sifting those data in order to create information, and correlating and analyzing that information in order to produce various forms of knowledge. That knowledge—be it a fisheries population model, a specific patent issuance, or an informed census report—needs to be effectively communicated to the American people and their governmental representatives. In most instances the quality and value of such knowledge can only be judged by a professional peer review. The practical implications of such knowledge are often expressed in the form of regulation or legislation.

The second group of Administrations, in my judgment, have a more easily defined and easily measured set of missions. In sum, these missions involve the continuous

improvement and global expansion of American business. The Bureau of Export Administration, Economic Development Administration, and International Trade Administration all are charged with the expansion of the American free enterprise system domestically and especially abroad. Freeing up markets so that U.S. business can effectively export has to be a lead objective of the entire Department. The American enterprise system is the greatest economic development in history. Making that system operate throughout the world will not only improve opportunities in America, but can literally change the state of world prosperity.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years?

I see no forces that are likely to produce wholesale changes in the missions of the various Administrations of the Department. However, there are two types of forces that will change the priority or importance of these missions. The first of these are economic forces can and will affect the trade and export functions of the Department. More difficult economic conditions are likely to produce greater focus on trade issues. The rapid development of one part of the economy—for example biotechnology or venture capital—may necessitate a shift in emphasis and priority from those responsible for managing the Department of Commerce. The second set of forces are those of a physical or chemical nature—natural forces you might call them. Everything from changes of weather patterns to technical developments in understanding global warming can and should change priorities and allocation of appropriate resources.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why?

As I described in the answer to Question F.7, outside economic forces and external physical or natural phenomenon affect the Department's ability to achieve its various missions.

The three top challenges to the Department's success are enumerated below:

(i) First is the economy. A neutral or recessionary economic environment could require budgetary reductions and consequent impairment of the Department's ability to function.

(ii) Second is the pace and nature of technological change. So much of the Department's mission is scientifically based that an unexpected scientific finding could call into question and call for a redirection of programs and mission definitions. Specific examples of this phenomenon could develop from research efforts in biotechnology, internet-based systems, or oceanic physics and chemistry.

(iii) The third challenge results from the Department's responsibility to encourage a broad distribution of the benefits of the country's economic growth. The tremendous growth of the internet and related computer sciences is occurring just as the great deficiencies in American education are becoming increasingly apparent. Participation in economic growth requires education which is lacking in some regions of the country and sectors of our society. Rationalizing that disparity is an enormous challenge.

9. In further reference to question No. 6, what factors in your opinion have kept the department/agency from achieving its missions over the past several years?

In many respects the Department has been quite successful over the past few years. The economy has been strong and funding has been adequate. However, there are a few areas where improvement can be sought. The development of trade partnerships in Southern Asia has been impaired by the economic turmoil in that region over the past few years. Commercial relations with China have moved only haltingly because of domestic disagreements as to the appropriate policy for dealing with the Chinese. On the scientific front, uncertainty over the causes or even the existence of global warming seems to have interfered with the responsiveness of our government in dealing with that issue. Similarly an uncertain scientific foundation in understanding our fisheries and their evolution seems to have hindered the development and dissemination of effective and widely accepted plans for managing those natural resources. Last, very little progress has been made in an equitable distribution of the benefits of America's economy. Great efforts and resources have been expended; however, the problem continues to be glaringly apparent. Education is a big part of the solution, and the Department can and should contribute to that effort.

10. Who are the stakeholders in the work of this agency?

Ultimately the stakeholders in the work of the Department of Commerce are the citizens of the United States. As proxies for the citizens, the local, State, and Federal Governments must be thought of as intermediaries or representative stakeholders.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10?

As Deputy Secretary of Commerce, I am responsible first to the Secretary of Commerce and with him to all American citizens and then intermediaries or representative stakeholders. First, we are responsible to the President and the Executive Branch of the Federal Government for carrying out the President's policies to the best of our abilities. Second, we are responsible to Congress and its various committees from whom we receive financial support and legislative requirements and to whom we are obliged to report our progress and to respond to suggestions and criticisms.

12. Question 12. (was not available at the time this hearing went to press)

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and report on your progress in achieving those goals.

Identifying performance goals and measuring progress against those goals is a widely accepted approach to managing and improving the performance of a complex enterprise. The most important benefit derived from this approach is the identification of areas of shortfall at an early enough time to permit timely response. It also provides an effective means of recognizing individuals and groups that are performing at a superior level.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs?

If the Commerce Department is failing to achieve any of its objectives, I presume that the Department leadership would be asked for an explanation and a remedial plan. If failure persists after a reasonable period for management response, I presume that Congress would and should institute responses up to the limit of its powers. I further presume that these responses would include some or all of the remedies mentioned in framing the question.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

First I should be held accountable for all legislated requirements for managing the Department. These would include the Chief Financial Officers Act of 1990 and the Government Performance and Results Act of 1993 (GPRA). In addition the Annual Performance Plan for the Department, as required by the GPRA, will set forth a series of tactical and strategic goals. The Secretary of Commerce and I should be held accountable to these goals and our progress measured against these goals.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

I follow the philosophy of setting goals and expectations for each employee, of periodic meetings and/or reports to assess progress, and an annual review to agree with the employee as to his or her cumulative performance. I pride myself on maintaining an informal atmosphere and make myself available for frequent unscheduled interaction. Most colleagues who have worked under my supervision over the years tell me that they have learned a good deal and have personally benefited from the interaction. I have had no employee complaints against me.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe.

I have had no prior working relationship with Congress or its committees.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

As I understand it, the Inspector General has a role of investigating any instances of fraud, waste and abuse that are thought to exist within the Department. The Inspector General then has an obligation to report his/her findings to the Secretary and to Congress.

Over time I would hope to develop a relationship with the Inspector General of the Commerce Department such that he/she would communicate frequently and freely with the Secretary's office so that, if warranted, prompt remedial action could be implemented.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress.

If confirmed, I would expect to have frequent personal interaction with the Senate Committee on Commerce, Science and Transportation and other stakeholders as to the progress we are making on various missions of the Department. I am certain those meetings will afford ample opportunity for appropriate suggestions and criti-

cisms to be offered. Further, we will be obliged to prepare and submit an Annual Performance Plan which will enumerate our objectives. I would expect frequent discussions related to our progress on these objectives to take place between Commerce staff (including myself), and all stakeholders. I believe I would have the affirmative obligation to alert affected stakeholders, including the committee, if I anticipate significant shortfall from any of our objectives.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities: Please state your personal views.

Because of the highly diverse nature of the Department's activities, I find it impossible to give the Committee a meaningful set of priorities. However I would offer a few suggestions: (i) First we will need approval for a FY '02 budget for the Department. This budget should be consistent with the President's priorities and objectives. (ii) We should seek a reauthorization of the legislation for the regulation of our fisheries. (iii) I believe that "fast track" authority for the President to negotiate international trade agreements is very high priority.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation.

I do pledge to work with the Secretary to organize a management system to allocate discretionary spending based on national priorities as determined in an open forum. I am aware that Congress will have views on these matters and will express them from time to time. These views, as well as views within the Department and other parts of the Executive Branch, will form the basis for spending allocation.

The CHAIRMAN. The Committee is very pleased to have you willing to come and sacrifice in order to serve the government.

You say you are going to foster technology, and yet I am reading in the papers that you are going to get rid of the Advanced Technology Program (ATP). What do you mean you are going to foster it, but then get rid of it?

Mr. BODMAN. Well, there are all aspects of technology fostering, if you will, that go on within the Commerce Department. The Advanced Technology Program is one of them.

The CHAIRMAN. What do you think of it?

Mr. BODMAN. Well, I have to say, sir, that first I would tell you that you are looking at a product of the Federal funding of research. I was funded during my graduate years at MIT by a National Science Foundation fellowship and the works that I depended upon were projects and programs that had been funded by the Office of Naval Research and by DARPA.

I am a great believer in the effectiveness and the power of the Federal Government funding research. I think the question, at least as I understand it, and I would reiterate I have not been involved in this, because whatever discussions have gone on and decisionmaking I have been excluded from, but if I am confirmed, I would expect that this is one of the areas that the Secretary would expect me to focus my time and attention on because I have a good deal of experience in understanding and managing the process of commercializing technology, commercializing new ideas.

The CHAIRMAN. Well, that said, it is not fostering research—you came in finally and made a safe landing by the last comment—by commercializing. What we found in our experiences some 20 years ago was that we were fostering the research. There is not any question that the United States of America is a leader in technology research. But we were not the leader by any manner or means in the commercialization, the actual development and the commercialization of it. We have got hundreds of examples.

We saw that we were losing out, and we had all of this research proved, but not developed and not commercialized, in the old Bureau of Standards that you had in the Department of Commerce. So we developed the Bureau of Standards into the National Institute of Standards and Technology, launched the Advanced Technology Program, and then supplemented it with the Manufacturing Extension Partnership program for the small businesses and otherwise to gear up and compete.

Now, getting right to the Advanced Technology Program, the projects that are funded have been vetted and re-vetted. The decision is made by a non-political panel not influenced by me or the Secretary, or by calls from the White House. Senator Danforth of Missouri was the chair at that time, and we went over it thoroughly in a bipartisan fashion.

One, the particular research that has been found first must be financed to the tune of 50 percent of those making application for participation in the ATP. Second, it must be found to be a unique particular research that needs to be developed. Then they have to stand in line on a limited funding basis to see whether or not they ought to be funded, and that comes through the National Institute of Standards and Technology within the Department, which is a group of professionals, and not calls from the Senator and the Commerce Committee or from the Secretary calling down and saying, I want to fund this, or from the White House saying, we have got a campaign going and we would like to take and beef up that vote in New Jersey, so let us get that New Jersey program going.

So we went about it very, very carefully, and it has weathered the storms, in fact, first opposed by the executive branch and then enthusiastically supported. So that is why I am somewhat dismayed. When you said you were fostering research I said, well, maybe you have got the wrong idea. It is not the research at all. It is actually the development and commercialization of the research.

We have the Academy of Sciences and everything else. We have got tax write offs and things galore going on that we all favor with respect to fostering research. But this is the one program in government that commercializes and develops the research.

Let me just ask one question about trade. What do you think is the Commerce Department's role fostering trade? What do you intend to do about trade? You mentioned NOAA, you mentioned the Census, you mentioned all these other things, including NIST. But, you did not mention trade. You have got a Secretary who is interested in that for a change, and I was wondering if you were interested.

Mr. BODMAN. Yes, sir, I am interested in that. Having spent the bulk of my time during the last 14 years engaged in international trade, it seems to me the responsibility of the Department is twofold: One, to expand our trade agreements, which will expand markets for American business abroad; and second, to enforce the agreements that are in place. We expect to do both.

The CHAIRMAN. Well, we got a break in Sunday's *New York Times*. I will not read the entire article entitled "Free Trade's Promise in Latin America: The Poor Survive It All." However, I will read the following:

Their debate barely touches a far more fundamental question: Does the combination of democracy and free enterprise guarantee achievement of the larger goal—higher living standards? In Latin America, the answer often is no.

[Full article is included in the Appendix.]

I testified 40 years ago before the old International Tariff Commission, and at that time they said, Senator—incidentally, I had Tom Dewey representing Japan. Excuse me, they said,

Governor, what do you expect these emerging countries from World War II and the Third World countries to make? Let them make the shoes and the clothing; we will make the airplanes and the computers.

Now fast-forward 40 years. They are making the shoes, the clothing, the airplanes, the computers, and by way of production, we are going out of business. We had 42 percent of the work force at the end of World War II in production and manufacturing. By 1965, it was down to 29 percent, and it is now down to 12 percent. So we are not making anything.

Otherwise, the competition in trade is competition with ourselves. America's industry has given up on the government. For example, let us go right straight to Japan. They say: "You do the research," which bothers me. Secretary Evans has already sent Dr. Kosmetzki over to Japan to set up all of their research. So they are doing the research, and they are doing the manufacturing, and we are doing the sales and promotion and sales in country.

So you do not find—when I used to come 30 years ago, the first fellow on the trade bill was the downtown lawyer for Japan. Now it is the downtown lawyer for the Fortune 500. They are gone. It caused the *Wall Street Journal* to headline right after we had the vote on PNTR that it was not really a trade measure, it was an investment measure. It was to allow America's industry to invest in China. We have got an \$83 billion deficit in the balance of trade with China. Europe does not have that, but we are going out of business there.

We found, of course, with NAFTA that that is exactly what it was, an investment agreement with Mexico. Rather than gaining 200,000 jobs, we have lost 600,000. So it is an 800,000 swing that we know about.

So as you work as the Deputy Secretary of this auspicious Department of government, commerce and trade—and I would like to change the name to "Trade and Commerce" and emphasize it—in essence, you are running around worried about fisheries, you are worried about the Census, you are worried about all these other tidbits, while the economic strength of the nation is being drained.

So if you do not mind, please talk to the Secretary and tell him you are enthused about doing something about trade.

Mr. BODMAN. I have the feeling you have already communicated that, sir.

[Laughter.]

The CHAIRMAN. We welcome you and we appreciate it. We are looking forward to working with you. The Committee will be at ease to submit questions from a couple of other Senators that I believe had some questions for you. As soon as we solve this organi-

zational problem that we have here in the U.S. Senate, we will be voting on your confirmation.

Thank you very much, Mr. Bodman.

Mr. BODMAN. Thank you very much, sir. We appreciate the help.

The CHAIRMAN. Yes, sir.

Our second panel is: Allan Rutter, nominated as Administrator—our second panel, if they will come forward, please: Mr. Allan Rutter, he is nominated to be Administrator of the Federal Railroad Administration; Kirk Van Tine, who is nominated as the General Counsel at the Department of Transportation; and Ellen Engleman, who has been nominated to be Administrator of the Research and Special Programs in the Department of Transportation.

Mr. Rutter, you have, I believe, your wife with you?

Mr. RUTTER. Yes, sir, my wife, Melanie.

The CHAIRMAN. We welcome you to the Committee. We are glad to have you.

Mr. Van Tine, you have your wife and daughter, I believe.

Mr. VAN TINE. Yes, Mr. Chairman, my wife Barbara and my younger daughter, Meredith, who is 17. My older daughter Lindsay is away at college, and she could not be here today.

The CHAIRMAN. Very good.

Ms. Engleman, you have—whoa, boy, you have got a good group here. You have got your mother, your stepfather, your nephew, and me as your friend. Go ahead. Would you introduce your mother and relatives, please.

Ms. ENGLEMAN. Thank you, sir. My mother, Beatrice Engleman Johnson; my nephew, Kyle Andrew Kewis; my stepfather, Robert Johnson.

The CHAIRMAN. We are very glad to have them. Thank you very much.

Let us start with you, Ms. Engleman. The statements of the witnesses in their entirety will be included in the record. You can highlight it as you wish.

STATEMENT OF ELLEN G. ENGLEMAN, NOMINEE TO BE ADMINISTRATOR OF THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Ms. ENGLEMAN. Thank you, sir. There was a slight flood here. I believe that is my first Office of Emergency Preparedness action. [Laughter.]

Mr. Chairman, Members of the Committee, and staff: It is with great humility and appreciation I sit before you today as President Bush's nominee for the position of Administrator for the Research and Special Programs Administration within the U.S. Department of Transportation. If confirmed by the Senate, I look forward to the opportunity to work with Secretary Mineta and the Members of this Committee, and I thank you in advance for your time and consideration.

My professional work experience has focused on a mix of public policy, law, and communications. As an attorney, I understand and support the legislative and regulatory process. As a public policy professional, I understand and support the need for successful communication and coordination among the modes within the Department of Transportation and legislative, executive, and judicial

branches of government, as well as key stakeholders, constituents, and/or employees.

As current president and CEO, I bring a business perspective with advanced managerial skills and a focus on achieving a return on investment for Federal dollars and programs and creating and managing efficient and effective projects.

If confirmed as Administrator for RSPA, I would focus on identifying, supporting, and developing when necessary programs, rules, and regulations that support the goals of increasing safety for the American people. As an attorney, regulatory matters are of considerable importance to me. As a citizen, I believe that regulations are intended to be supportive of my health and safety. As Administrator of RSPA, regulatory issues for pipeline safety and hazardous materials are an important part of the overall role and responsibility of the RSPA mission.

As such, it would be a key priority to act with the utmost diligence to ensure that duly enacted laws are enforced, that regulations comply with the letter and spirit of the law, and that timely implementation and responsiveness by RSPA is carried out in all areas. This includes a commitment to working closely with Congress to deliver successful pipeline safety reauthorization.

If confirmed, I will work to ensure that a firm commitment to efficient and effective use of Federal funds is universally understood and accepted by all within RSPA. I wholeheartedly agree with President Bush in his statement that it is the people's money and anyone associated with the governance, issuance, and responsibility of Federal funds should share in this belief. In practical terms, this means that programs and projects within RSPA should be held to a high standard, seeking to develop and create efficiency and effectiveness in all tasks.

I will support partnership solutions and innovative programs and projects that address our national energy goals. I believe that RSPA program goals should seek synergy among the transportation modes and other agencies within the Federal Government. I would focus on inter-agency, intermodal, and departmental cooperation and coordination whenever possible to lower costs, focus on avoiding duplication of effort and responsibility, and developing partnering opportunities.

This includes review of regulatory, contractual, and procurement standards to remove unnecessary requirements, procedures, or regulations that discourage innovation, restrict or limit efficiency and effectiveness, and negate incentives.

I believe that all professionals can improve their capability and ability to learn, to manage, to develop professionally and personally. I know that I will face new challenges in my role as a senior government official if confirmed. I am willing to listen and learn and dedicate that which I do know through my professional career and educational background to do my best each and every day. I will seek out detailed knowledge of RSPA senior staff and ask Congress and key transportation constituents and stakeholders to share their opinions and views to support my education and my understanding of the other critical issues facing RSPA and the Department of Transportation.

Honesty, integrity, commitment, ethical behavior, and perseverance are the core values and performance goals that would form my responsibilities as RSPA Administrator. It would be my responsibility to build bridges of communication, enhance relationships, and fulfill my official responsibilities in a dutiful, honorable, and responsible manner. In addition, I hope to offer measurable results via improved efficiency, effectiveness, awareness, cost versus return on investment, and responsiveness.

I believe that we work as individuals, but are most effective when we come together as a team. I believe in rewarding individual performance, supporting individual professional growth, and establishing clear direction, goals, and advertised rewards and consequences. In short, I believe in open and honest communication with respect to the individual, his work, his work ethic, and his ethic.

I believe in leading by example and would provide motivation and enthusiasm and hold myself accountable for failures. If confirmed, I will work as closely and regularly with Congress as possible.

As a daughter of a Federal employee who is in her forty-sixth year of government service, I am proud to share her belief that public service is both an honor and a responsibility. As an officer of the U.S. Naval Reserve, I am proud to serve this country. As the president and CEO of Electricore, a public-private partnership, I have had the responsibility to protect Federal investment, to ensure successful program management, and develop winning strategies to support our national goals of education, economic development, environment, and energy independence. As a community volunteer, I know what a difference a single person can make when the heart is committed to a larger goal than oneself. As a proud Hoosier, I believe in the American dream and the American spirit.

To serve as the Administrator for RSPA would be the greatest honor and responsibility that would call upon my professional and personal knowledge and skills in a unique role of public service. I believe that we as a nation are on the critical edge of decision-making that will affect our country and our world for generations to come. It would be my honor and privilege to dedicate my heart and my mind to supporting President Bush, Secretary Mineta, and the American people in this mutual effort, and to serve all Americans who rely on safe and secure transportation enforcement and a safe and effective national transportation system for goods and services.

Thank you again for your time and consideration.

[The prepared statement and biographical information of Ms. Engleman follow:]

PREPARED STATEMENT OF ELLEN G. ENGLEMAN, NOMINEE TO BE ADMINISTRATOR OF
THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Mr. Chairman and Members of the Committee: It is with great humility and appreciation that I sit before you today as President Bush's nominee for the position of Administrator for Research and Special Programs Administration within the Department of Transportation. If confirmed by the Senate, I look forward to the opportunity to work with Secretary Mineta and the Members of this Committee. I thank you in advance for your time and consideration.

My professional work experience has focused on a mix of public policy, law and communication. As an attorney, I understand and support the legislative and regulatory process. As a public policy professional, I understand and support the need for successful communication and coordination among the modes within the Department of Transportation and the Legislative, Executive and Judicial branches of government as well as key stakeholders, constituents and employees. As a current President and CEO, I bring a business perspective with advanced managerial skills and a focus on achieving a return on investment for Federal dollars and programs and creating and managing efficient and effective programs.

If confirmed as Administrator for RSPA, I would focus on identifying, supporting and developing, when necessary, programs, rules and regulations that support goals of increasing safety for the American people.

As an attorney, regulatory matters are of considerable importance to me. As a citizen, I believe that regulations are intended to be supportive of my health and safety. As Administrator of RSPA, regulatory issues for pipeline safety and hazardous materials are an important part of the overall role and responsibility of the RSPA mission. As such, it would be a key priority to act with the utmost diligence to ensure that duly enacted laws are enforced, that regulations comply with the letter and spirit of the law and that timely implementation and responsiveness by RSPA is carried out in all areas. This includes a commitment to working closely with Congress to deliver successful Pipeline Safety Reauthorization.

If confirmed, I will work to ensure that a firm commitment to efficient and effective use of Federal funds is universally understood and accepted by all within RSPA. I wholeheartedly agree with President Bush in his statement that it is the "people's money" and anyone associated with the governance, issuance and responsibility of Federal funds should share in this belief. In practical terms this means that programs and projects within RSPA should be held to a high standard, seeking to develop and create efficiency and effectiveness in all tasks. I will support partnership solutions in innovative programs and projects that address our national energy goals. I believe that RSPA program goals should seek synergy among the transportation modes and other agencies within the Federal Government. I would focus on interagency, inter-modal and departmental cooperation and coordination whenever possible to lower costs, focus on avoiding duplication of effort or responsibility and develop partnering opportunities. This includes review of regulatory, contractual and procurement standards to remove unnecessary requirements, procedures or regulations that discourage innovation, restrict or limit efficiency and effectiveness and negate incentives.

I believe that all professionals can improve their capability and ability to learn, to manage, to develop professionally and personally. I know that I will face new challenges in my role as a senior government official. I am willing to learn and listen and to dedicate that which I do know through my professional career and educational background to do my best, each and every day. I will seek out detailed knowledge of RSPA senior staff and would ask the Congress and key transportation constituents and stakeholders to share their opinions and views to support my education and my understanding of the other critical issues facing RSPA and the Department of Transportation.

Honesty, integrity, commitment, ethical behavior and perseverance are the core values and performance goals that would form my responsibilities as RSPA Administrator. It would be my responsibility to build bridges of communication, enhance relationships, and fulfill my official responsibilities and duties in a responsible and honorable manner. In addition, I hope to offer measurable results via improved efficiency, effectiveness, and awareness, cost versus ROI and responsiveness.

I believe that we work as individuals, but are most effective when we can come together as a team. I believe in rewarding individual performance, supporting individual professional growth and establishing clear direction, goals and advertised rewards and consequences. In short, I believe in open and honest communication with respect to the individual, his work efforts and ethic. I believe in leading by example, and would provide motivation and enthusiasm and hold myself accountable for failures. If confirmed, I will work as closely and regularly with Congress as is possible.

As the daughter of a Federal employee who is in her 46th year of government service, I am proud to share her belief that public service is both an honor and a responsibility. As an officer in the U.S. Naval Reserve, I am proud to serve this country. As the President and CEO of Electricore, a public/private partnership, I have had the responsibility to protect Federal investment to ensure successful project management and develop winning strategies to support national goals of education, economic development, environment and energy independence. As a community volunteer, I know what a difference a single person can make when the

heart is committed to a larger goal than oneself. And as a proud Hoosier, I believe in the American dream and the American spirit.

To serve as Administrator for RSPA would be the greatest honor and responsibility that would call upon my professional and personal knowledge and skills in a unique role of public service. I believe that we are, as a nation, on the critical edge of decisionmaking that will affect our country and our world for generations to come. It would be my honor and privilege to dedicate my heart and mind to supporting President Bush, Secretary Mineta and the American people in this mutual effort and to serve all Americans who rely on safe and secure transportation infrastructure and a safe and effective national transportation system for goods and services.

Thank you again for your time and consideration.

A. BIOGRAPHICAL INFORMATION

1. Name: Ellen Gayle Engleman.
2. Position to which nominated: Administrator—Research and Special Programs Administration, Department of Transportation.
3. Date of nomination: June 7, 2001.
4. Address: Not released to the public.
5. Date and place of birth: September 21, 1959, Beech Grove, Indiana.
6. Marital status: Single.
7. Names and ages of children: None.
8. Education: John F. Kennedy School of Government, Harvard University, 1992–1993; Master of Public Administration, 1993; Indiana University School of Law, 1984–1987, Juris Doctorate, 1987; Indiana University, 1979–1983, Bachelor of Arts, 1983.

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

President & CEO, Electricore, Inc. President and Chief Executive Officer for non-profit public/private research and development consortium dedicated to advanced transportation and energy technologies. Responsible for all operations, management and administrative duties, business development activities, communication, negotiation, program management and contractual administration, for \$160 million in total R&D contracts. Also responsible for governmental and community affairs with university and private sector participants and Federal agencies including Departments of Defense, Energy and Transportation. Responsible for organizational development and internal/external communication, public relations. Office located in Indianapolis, Indiana, 1993 to present.

Director, Corporate and Government Affairs, Direct Relief International. Responsible for corporate and government relations for non-profit international medical relief organization. Responsible for \$25+ million in-kind contribution budget and development of community governmental affairs outreach programs, designed corporate giving relationships and standards, supervised in-kind contributions team and served as liaison with almost 100 pharmaceutical and medical supply manufacturers, distributors. Located in Santa Barbara, California, 1993–1994.

Public Affairs, Corporate Communications Manager, GTE North, Inc. Responsible for corporate communications, public affairs and governmental affairs for 10-State regional headquarters for GTE Telecommunications company. Developed, produced and evaluated strategic communications programs/plans for 20,000 employees within a 10-State area operations with special emphasis on telecommunications, quality management and labor issues. Led inter- and intra-departmental teams within 10-State operations for special projects including task force on environmental efforts. Served as special assistant to the President. Served as EEO coordinator. Included executive speech writing and conference planning/design. Editor of employee newspaper responsible for all articles on telecommunications issues. Office headquartered in Westfield, Indiana, 1989–1992.

Public Affairs, Governmental Affairs Executive, GTE North, Inc. Responsible for initial review and analysis of proposed legislation for 10 States. Developed strategic plans and corporate responsive positions, coordinated lobbying efforts in support of GTE North telecommunications and business objectives in legislative arena for 10 States. Developed network of State and Federal legislative contacts. Developed political action committee membership recruitment and support activities, constituency relations and special events for 10 States. Developed legal guidelines for lobbying/PACs for 10 States. Office headquartered in Westfield, Indiana, 1987–1989.

Legislative Analyst, Indiana Judicial Study Commission, State of Indiana. Legislative Analyst for State of Indiana, responsible for studies of State courts to deter-

mine necessity for new court creation. Researched and investigated effectiveness and evaluation of proposed court creation within State of Indiana. On-site investigation, interviews, statistical analysis provided for testimony and documentation issued to General Assembly. Office located in State House, Indianapolis, Indiana 1985–1987.

Law Clerk, Marion County Prosecutor's Office, State of Indiana. Law Clerk for Marion County Prosecutor Stephen Goldsmith, responsible for legal research and other assignments. Special assignments included Governor's Task Force to Reduce Drunk Driving: designed major media event for and organized Hoosiers Against Drunk Driving 2 day conference for over 800 high school students. Marion County Medical Society: authored and coordinated production for booklet concerning mandatory reporting requirements issued to 2,000 physicians in Marion County, Indiana. Office located in City County Building, Indianapolis, Indiana, 1985.

Development Associate for Indianapolis Symphony Orchestra. Responsible for fund-raising support to development director. Researched and authored grant applications assisted with corporate and private fundraising campaigns, organized and coordinated special events. Managed major donor base. Office located in Indianapolis, Indiana, 1984.

Sales Manager, L.S. Ayres and Company. Selected from field of 600 applications for one of ten positions. Completed 12 week intensive training course, then assigned responsibility for \$1,000,000 area with sales forecasting and tracking for weekly, monthly projections, trend analysis. Supervised 16 full-time, 7 part-time employees. Responsible for multi-million sales area at Glenbrook store, located in Indianapolis, Indiana, 1983.

10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.)

Congressional Fellow, office of Senator Richard G. Lugar, U.S. Senate, 1992.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)

President & CEO, Electricore Inc. Corporate Officer, 1999-present; Board of Directors, Direct Relief International 1997–2001, (resigned June 2001); Board of Directors, Vitamin Angel Alliance, 1999–2001, (resigned June 2001).

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

Current Memberships: Indiana State Bar Association, Member; Indianapolis Bar Association; Columbia Club, Indianapolis, Indiana; Indianapolis Athletic Club, Indianapolis, Indiana.

Past Memberships: Indianapolis Opera Guild; Santa Barbara Grand Opera Association; Indianapolis Symphony North Group; Public Relations Society of America; Indianapolis Council on World Affairs; Indianapolis Committee on Foreign Relations; Junior League of Indianapolis; Heritage Place, Senior Citizens Center; Indianapolis Shakespeare Festival; Indianapolis Phoenix Theater; Kiwanis International.

13. Political affiliations and activities: (a) List all offices with a political party which you have held or any public office for which you have been a candidate. None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. General campaign support for: Kerns for Congress, 2000; Indiana State Republican Committee, general support for 2000 election; Richard G. Lugar for President, 1995; Lugar Senate Race, 1994; Dan Quayle, U.S. Senate, 1980; Republicans for Indiana, member of executive board, 1992–1992; 10 district Congressional Races, 1984, 1990, 1992; Marion County Prosecutor Race, 1986; Sue Anne Gilroy, mayoral race, Indianapolis; Goldsmith Governor's Race; Indianapolis County Council Republican support, 1986, 1990; William Hudnut mayoral race for Indianapolis, 1986; Victory 1990 State legislative race support, 1991–92.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. 1996, Richard G. Lugar Presidential Campaign, \$1,000; 2000 Congressional Campaign for Brian Kerns, \$1,000.

14. Honors and awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognition for outstanding service or achievements.) "Top Forty under 40" Indianapolis Business Journal, 1997; Richard G. Lugar Excellence in Public Service Series, 1992; Stanley K. Lacy Executive Leadership Series, Class XII, 1987; Columbia Club Chairman's Recognition Award for Exemplary Service, 1985.

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.) None.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated. None.

17. Selection: (a) Do you know why you were chosen for this nomination by the President?

I believe that I was chosen for nomination for the position of Administrator for Research and Special Programs in the Department of Transportation due to my almost 20 years experience and background in private sector corporate management and public affairs (a combination of law, public policy and public and governmental relations) with specific emphasis on my experience at Electricore, Inc. As President and CEO of Electricore, I have had the privilege of creating a successful public/private partnership among universities, small and large businesses and the Federal Government. Using a non-profit organization as a basis to create a partnership focus among disparate groups, allowed for a unique and ultimately successful "way of doing business" to be developed and evolve. Our successes include:

Serving as program manager for Federal R&D partnerships of \$160 million for over 70 projects. Key R&D program development with Department of Energy (Office of Transportation Technologies OTT, Energy Efficiency and Renewable Energy EERE), Department of Transportation Research Special Programs Administration (RSPA), the Defense Advanced Research Projects Agency (DARPA), Tank Automotive Command (TACOM—Department of Army), U.S. Air Force and Naval Surface Warfare Center, Crane Division.

Consortium recognized by a Hudson Institute assessment report as a "model for defense acquisition reform."

Designed, developed, and implemented the establishment of the Battery Evaluation and Testing Center at the Naval Surface Warfare Center, Crane Division. Created public/private partnership to allow private industry access to testing facilities at NSWCC. This "seed" of privatization provides for independent revenue to support 1100 engineering jobs at NSWCC.

Established Hawaii as first Electric Vehicle-ready State. In less than 12 months, designed, developed and implemented Federally-funded project to install electric vehicle infrastructure throughout State on three islands.

Successful consortium R&D projects include: design and delivery of first all-electric vehicle to the National Parks System; design and delivery of first advanced series hybrid transit bus to New York City; design and development of first advanced fast charging infrastructure; design and development of first heavy hybrid power train cyler; design and development of national fuel cell center for NSWCC; advanced power electronics and electric motor development.

Design, development and management of national Federal program reviews, conferences, program creation and planning sessions between industry and Federal agencies.

Representing industry leaders, decisionmakers and government to develop Federal programs. Monitor technology development, serve as liaison between industry and government to develop, create public/private partnerships.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

My experience as President & CEO of Electricore is of primary focus on my ability to serve as Administrator of Research and Special Programs at the Department of Transportation. Also, I have a unique professional background with almost 20 years experience and background in private sector corporate management and public affairs (a combination of law, public policy and public governmental relations). Through this tripartite set of skills, I have focused on building bridges of communication among disparate entities, creating new partnerships and entrepreneurial programs, developed successful governmental affairs, public relations and public outreach programs and focused on creating cost-effective, efficient and successful public/private projects and programs. This ability to communicate, coordinate, supervise, and manage governmental and community affairs projects with universities, small and large businesses and State and Federal Government uniquely supports my nomination as Administrator of RSPA.

RSPA is also uniquely positioned as an agency with a broad base of interests and responsibilities. As a professional "communicator" I can serve the needs of RSPA in supporting safety and educational outreach for pipeline safety, transportation of hazardous materials, negotiation of Federal and State relationships, and support the overall goals of the Department of Transportation. As an attorney, I offer support and understanding of the regulations and contractual negotiations necessary to support Research and Development, pipeline, HAZMAT and safety reporting regula-

tions and standards. As someone experienced in program management of Federal research and development projects, public outreach and recruitment of universities and private companies to work together in partnerships, I offer support to the Volpe National Transportation Systems Center, the university partnerships, and the Transportation Safety Institute. Last, as someone experienced in disaster relief and medical relief, I will support the RSPA responsibilities of emergency management and disaster coordination.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

Please refer to the Acting General Counsel opinion letter.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Please refer to the Acting General Counsel opinion letter.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

Electricore, Inc. has been and is currently under contract for R&D projects with the Federal Government. As part of my ethics agreement, I will recuse myself from direct involvement with any Electricore activities for 1 year.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

Electricore, Inc. is one of the Advanced Vehicle Program consortia members. I have acted in concert with my fellow consortia members to support the Advanced Vehicle Program.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

As part of my ethics agreement I will recuse myself from direct involvement with any Electricore activities for 1 year.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any businesses of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes, to the best of my ability.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes, to the best of my ability.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes, to the best of my ability.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

I will work closely with RSPA staff to ensure that proposed regulations meet and do not exceed the statutory intent expressed in legislation. I will do my best to keep Congress informed of the timetable and substance of proposed legislation under the guidelines of and in adherence to the Administrative Procedure Act. I will focus on procedures and processes that will expedite the rulemaking process and support improvements in accountability and efficiency.

5. Describe your department/agency's current mission, major programs, and major operational objectives.

First and foremost, RSPA is inter-modal and supports and coordinates with all other modes within DOT on matters such as hazardous material regulation. Second RSPA is a network of programs that share an underlying focus—that of safety. Third, RSPA has a leadership role in research and development, public education, emergency and disaster coordination and management.

RSPA is unique in terms of its multi-modal mandate and organizational history and has a mission to support safety, inter-modalism, cost effective regulation, compliance training and research. Strategic goals include: Safety of people and property through the reduction of transportation related deaths, injuries and property damage via pipeline safety, hazardous materials, and emergency disaster management; Protection of the environment through the reduction of transportation related events and incidents that pose a threat to or inflict harm upon the environment; Support of the nation's economic health through research and development activities that foster innovation through science and technology to support national transportation goals including safety, mobility, economic growth and trade, and national security; Support of education and training through innovative partnerships with universities, support of the Volpe National Transportation Systems Center and the Transportation Safety Institute; Support of emergency management through coordination within DOT and with FEMA and other agencies to secure and minimize the harmful impact on people, property and environment by providing and ensuring transportation readiness in time of crisis.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated?

As discussed above, my professional work experience has focused on an inter-related mix of public policy, governmental and public relations, law and communication. As an attorney I understand and support the legislative and regulatory process. As a public relations professional I understand and support the need for successful communication and coordination among and between modes within the Department of Transportation and Legislative, Executive and Judicial branches of government as well as key stakeholders, constituents and employees. As a current President and CEO, I bring a business perspective with advanced managerial skills and a focus on achieving a return on investment for Federal dollars and programs and creating and managing efficient and effective programs.

2. Why do you wish to serve in the position for which you have been nominated?

First and foremost, as the daughter of a Federal employee who is in her 46th year of government service, I am proud to share her belief that public service is both an honor and a responsibility. As an officer in the U.S. Naval Reserve, I am proud to serve this country. As the President and CEO of Electricore, a public/private partnership, I have the responsibility to protect Federal investment to ensure successful project management and develop winning strategies to support national goals of education, economic development, environment and energy independence. As a community volunteer, I know what a difference a single person can make when the heart is committed to a larger goal than oneself. And as a proud Hoosier, I believe in the American dream and the American spirit.

To serve as Administrator for RSPA would be the greatest honor and responsibility that would call upon my professional and personal knowledge and skills in a unique role of public service. I believe that we are, as a nation, on the critical edge of decisionmaking that will affect our country and our world for generations to come. It would be my honor and privilege to dedicate my heart and mind to supporting President Bush, Secretary Mineta and the American people in this mutual effort.

3. What goals have you established for your first 2 years in this position, if confirmed?

I would focus on identifying, supporting and developing, when necessary, programs and projects that support goals of increasing safety for the American people. I would further address issues affecting the environment; issues supporting economic development through efforts to mitigate traffic congestion, and issues that increase fuel efficiency and emissions reduction through our research and development efforts. I would look to develop or create new public/private partnerships that seek out the best in government, universities and the private sector to improve our transportation systems.

I will work to ensure that a firm commitment to efficient and effective use of Federal funds is universally understood and accepted by all within RSPA. I wholeheartedly agree with President Bush in his statement that it is the "people's money" and anyone associated with the governance, issuance and responsibility of Federal funds should share in this belief. In practical terms, this means that programs and projects within RSPA should be held to a high standard, seeking to develop and create efficiency and effectiveness in all tasks.

I believe that RSPA program goals should seek synergy among the modes and other agencies within the Federal Government. I would focus on interagency, intermodal and departmental cooperation and coordination whenever possible to lower costs, focus on avoiding duplication of effort or responsibility and develop partnering opportunities.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

I believe that all professionals can improve their capability and ability to learn, to manage, to develop professionally and personally. As such, I know that I will face new challenges in my role as a senior government official. I am willing to learn and listen and to dedicate that which I do know through my professional career and educational background to do my best, each and every day.

As with any new position, I would need to seek out additional information and detailed knowledge of key issues support from RSPA senior staff. I would also ask administration officials, the Congress and key transportation constituents and stakeholders to share their opinions and views to support my education and my understanding of the issues facing RSPA and the Department of Transportation.

5. Who are the stakeholders in the work of this agency?

The stakeholders for RSPA are the Congress, State and local officials, private sector entities involved in the transportation of hazardous materials and in pipeline transport, the general public who rely on safe and secure transportation infrastructure and virtually all other Americans who rely on a safe and effective national transportation system for goods and services.

6. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 5?

My role as Administrator for Research and Special Programs at the Department of Transportation would be to listen, learn, communicate, and support efforts for mutual benefit among the identified stakeholders. It would be my responsibility to build bridges of communication, enhance relationships, and fulfill my official responsibilities and duties in a responsible and honorable manner. I would be particularly conscious of my role in rulemaking and observe *ex parte* communication requirements if confirmed as Administrator.

7. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced

in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls?

My first responsibility is to ensure that I am aware of and knowledgeable about the RSPA budget, the roles and responsibilities of its departments, its internal financial controls and processes.

Second, it would be my responsibility to monitor and review RSPA departmental spending.

Third, I would encourage and motivate all employees to do "more with less."

Fourth, I would lead by example and seek ways and means to more efficiently administer any direct budget items and programs under the Administrator's direct control.

(b) What experience do you have in managing a large organization?

I have managed programs affecting 20,000 employees at GTE, coordinated and served as liaison with over 100 large companies when at Direct Relief International and currently am responsible for a research and development consortium consisting of over 50 universities and businesses in 17 States for Electricore, Inc. I am responsible for program management for a total of \$160 million in Federal R&D contracts involving over 75 projects.

8. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals.

I strongly support the goals and requirements of the Government Performance and Results Act. This legislation requires the development of measurable program targets and thus ensures that mission and vision are developed. I believe that a strategic plan carefully crafted and responsibly implemented is at the core of successful management.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs?

Congress has a right to anticipate and expect that a Department will meet its stated goals and core performance objectives. If this does not occur, then an analysis and evaluation of this failure should be conducted. If exceptional or extraordinary circumstances occurred which affected the outcome or limited goals, then this should be documented and utilized as part of the lesson's learned analysis. It is important to try to identify if limited or individual success was achieved even if overall objectives were not met. That which is "good" or successful should be acknowledged and continue. That which was "negative" or a failure should be equally acknowledged and consequential actions may include eliminating, privatizing, downsizing or consolidating programs.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

Honesty, integrity, commitment, ethical behavior and perseverance are the core values and performance goals that would form my responsibilities as RSPA Administrator. In addition, I hope to offer measurable results via improved efficiency, effectiveness, and awareness, cost versus ROI and responsiveness.

My role as Administrator for Research and Special Programs at the Department of Transportation would be to listen, learn, communicate, and partner in support of efforts for mutual benefit among the identified stakeholders. It would be my responsibility to build bridges of communication, enhance relationships, and fulfill my official responsibilities and duties in a responsible and honorable manner.

9. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

I believe that we work as individuals, but are most effective when we can come together as a team. I believe in rewarding individual performance, supporting individual professional growth and establishing clear direction, goals and advertised rewards and consequences. In short, I believe in open and honest communication with respect to the individual, his work efforts and ethic. I believe in leading by example, and would provide motivation and enthusiasm and hold myself accountable for failures. I am not aware of having an employee complaint brought against me as a supervisor or fellow employee.

10. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe.

If confirmed, I will work as closely and regularly with Congress as is possible. In my professional life I have worked successfully with individual congressional offices on a bi-partisan basis and with Federal agencies.

11. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

I would work closely with the Inspector General and anticipate that any and all oversight that is brought to the department from the IG is of value to the success of the department. I believe that the IG's oversight and inspection is an important part of the checks and balances we have within the American system of government and will meet all required responsibilities of my office to support and cooperate with the IG.

12. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress.

As an attorney, regulatory matters are of considerable importance to me. As a citizen, I believe that regulations are supportive of my health and safety. As Administrator of RSPA, regulatory issues are an important part of the overall role and responsibility of the RSPA mission, especially in pipeline safety and hazardous material areas. As such, it would be a key priority to act with the utmost diligence to ensure that duly-enacted laws are enforced, that regulations comply with the letter and spirit of the law and that timely implementation and responsiveness by RSPA is carried out in all areas.

13. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

I believe that legislative action which is directed to supporting transportation safety, effectiveness, and efficiency would be first priorities. Second, I believe that legislative actions supporting critical research and development activities to support national energy needs and development, economic development (and related congestion mitigation) and energy security and national defense should be addressed.

Although I have not studied all the major policy and management issues involved with RSPA, I believe that the following areas are appropriate for specific discussion: Reauthorization of TEA-21 to include enhancement of R&D programs which support the national goals of economic development, clean air, and energy independence; Support for coordination of interagency programs and policies for increased efficiency and effectiveness of Federal programs; Support for and development of public private partnerships to develop solutions in innovative programs and projects that address our national goals; Review of regulatory, contractual and procurement standards to remove unnecessary requirements, procedures or regulations that discourage innovation, restrict or limit efficiency and effectiveness and negate incentives.

14. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation.

Yes. I believe that discretionary spending should be allocated in a manner that is fixed, fair and include an open and acknowledged standard or criteria. Funding should reflect the statutory intent of authorized programs.

The CHAIRMAN. Thank you very much.
Mr. Van Tine.

STATEMENT OF KIRK K. VAN TINE, NOMINEE TO BE GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION

Mr. VAN TINE. Thank you, Mr. Chairman. It is a great honor to appear before the Committee today as the President's nominee to serve as the General Counsel of the Department of Transportation. I deeply appreciate Secretary Mineta's confidence in my ability to assist in this role and, if confirmed, I look forward to working with you and the other Members of the Committee and all of your staffs to address the pressing transportation issues that affect all Americans today.

Secretary Mineta has emphasized that the transportation challenges we face today can only be resolved through consultation, co-

operation, and coordination among all of the governmental and private sector stakeholders, and that new challenges require new ideas. I believe my background equips me well to contribute to the development of a more innovative, responsive Department of Transportation.

I have had experience working with large government organizations. I served in the Navy as a submarine officer and I have represented the FDIC, a government corporation, in litigation matters for a number of years. I agree with the Secretary's view that the Department's success depends ultimately on having highly motivated and well-trained employees.

While no private sector experience compares with the challenges of government service, I believe my years as a partner with management responsibilities in a large law firm have given me the necessary preparation for the responsibility of guiding the legal staff of the Department of Transportation and coordinating the work of the chief counsels' offices in the operating administrations.

The Department is very fortunate to have an outstanding, highly experienced career legal staff, not only in the Office of General Counsel, but in all the operating administrations as well. I look forward to working with them and learning from them.

The fundamental responsibility of the Office of General Counsel is to provide dependable and timely legal advice to the Secretary and other departmental employees. While I have a lot to learn regarding the particular statutes under which the Department operates, my background and experience as a lawyer is in using the law to solve practical problems. From what I have learned so far, it appears the major challenges facing the Department are fundamentally practical problems, such as ensuring safety, relieving congestion, and protecting consumers. I know those issues and many others are of the utmost importance to Congress and I commit that if I am confirmed, I will apply all my legal skills and energy to help find workable solutions to the challenges that face the Department of Transportation.

I know that all the Members of the Committee and the Committee staffs are extremely busy right now and I would like to thank the Committee for scheduling today's hearing. I would be pleased to respond to any questions you may have.

[The prepared statement and biological information of Mr. Van Tine follow:]

PREPARED STATEMENT OF KIRK K. VAN TINE, NOMINEE TO BE GENERAL COUNSEL,
DEPARTMENT OF TRANSPORTATION

Thank you, Mr. Chairman and Members of the Committee:

It is a great honor to appear before the Committee today as the President's nominee to serve as General Counsel of the Department of Transportation. I deeply appreciate Secretary Mineta's confidence in my ability to assist in this role, and if confirmed, I look forward to working with all of you and your staffs in addressing the pressing transportation issues that affect all Americans today.

Secretary Mineta has emphasized that the transportation challenges we face today can only be resolved through consultation, cooperation and coordination among all of the governmental and private sector stakeholders, and that new challenges require new ideas. I believe my background equips me well to contribute to the development of a more innovative, responsive Department of Transportation.

I have had experience in working with large government organizations—I served in the Navy as a submarine officer, and have represented the FDIC—a governmental corporation—in litigation matters for a number of years—and I agree with

the Secretary's view that the Department's success depends ultimately on having highly motivated and well trained employees. While no private sector experience compares with the challenges of government service, I believe my years as a partner with management responsibilities in a large law firm have given me the necessary preparation for the responsibility of leading the legal staff in the Department of Transportation, and coordinating the work of the Chief Counsels' Offices in the operating administrations. The Department is very fortunate to have an outstanding, highly experienced career legal staff, in the Office of General Counsel, and in all the operating administrations. If confirmed, I look forward to working with them and learning from them.

The fundamental responsibility of the Office of General Counsel is to provide dependable and timely legal advice to the Secretary and other Departmental employees. While I have a lot to learn regarding the particular statutes under which the Department operates, my background and experience as a lawyer is in using the law to solve practical problems. And from what I have learned so far, it appears that the major challenges facing the Department are, fundamentally, practical problems, such as ensuring safety, relieving congestion and protecting consumers. I know those issues, and many others, are of the utmost importance to Congress, and I commit that—if I am confirmed—will apply all my legal skills and energy to help find workable solutions to the challenges that face the Department of Transportation.

I know that all the members of the Committee, and the Committee staffs, are extremely busy right now, and I would like to thank the Committee for scheduling today's hearing. I would be pleased to respond to any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name: Kirk K. Van Tine.
2. Position to which nominated: General Counsel, U.S. Department of Transportation.
3. Date of nomination: June 13, 2001.
4. Address: Not released to the public.
5. Date and place of birth: August 30, 1948; Syracuse, New York.
6. Marital status: Married to Barbara B. Van Tine, maiden name Barbara A. Byers.
7. Names and ages of children: Mary Lindsay Van Tine, 20; Meredith Leigh Van Tine, 17.
8. Education: 1966 to 1970, U.S. Naval Academy, Annapolis, MD; B.S., June 1970; 1975 to 1978, University of Virginia School of Law, Charlottesville, VA; J.D. 1978.
9. Employment record: 1970–1975, Officer, U.S. Navy, various locations; 1975–1978 Student, U.Va. School of Law, Charlottesville, VA; Summer 1976, Summer Associate, Law Offices of Northcutt Ely, Washington, DC; Summer 1977, Summer Associate, Baker & Botts, Washington, DC; Summer 1977, Summer Associate, Hunton & Williams, Richmond, VA; 1978–Present, Attorney, Baker Botts, L.L.P., Washington, DC, (Associate 1978–1986; Partner 1987–Present).
10. Government experience: U.S. Navy 1966–1970.
11. Business relationships: Partner, Baker Botts, L.L.P.; Partner, Boterlove (Baker Botts real estate partnership in Houston office building where firm offices are located).
12. Memberships: Member, D.C. Bar Association; Co-Chair, D.C. Bar Litigation Section; Co-Chair, D.C. Bar Law Practice Management Section; Chair, D.C. Bar Election Board; Member, D.C. Bar Special Committee on Implementation of Civility Guidelines; Member, City Club of Washington.
13. Political affiliations and activities: (a) List all offices with a political party which you have held or any public office for. None.
(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. 11/17/00 to 12/13/00, Provided legal services in support of George W. Bush in connection with 2000 Presidential Election litigation in Tallahassee, Florida.
- Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. 1999, The Bluebonnet Fund (Baker Botts Political Action Committee, \$522; 2000, The Bluebonnet Fund (Baker Botts Political Action Committee, \$522; 2001, The Bluebonnet Fund (Baker Botts Political Action Committee, \$540; 1999, George W. Bush, Republican Presidential Primary Campaign, \$1000.
14. Honors and awards: Competitive Appointment to U.S. Naval Academy; National Defense Service Medal, U.S. Navy; Virginia Law Review; Order of the Coif

(top 10 percent of law school class); D.C. Bar Best Section Award, Litigation Section Co-Chair, 1999–2000.

15. Published writings: “Financial Services Modernization: A Cure for Problem Banks?,” 69 Wash. U.L.Q. 809 (1991).

“Enforcement Issues Under the Natural Gas Act of 1938 and the Natural Gas Act of 1978,” 16 Hous. L. Rev. 1025 (1979).

16. Speeches: None.

17. Selection: (a) Do you know why you were chosen for this nomination by the President?

I believe I was chosen as a result of my background and experience as a lawyer practicing in Washington, DC since 1978. While I have very little experience with the substantive issues presently before the Department of Transportation, I have substantial experience in the principles of administrative law, which establish the legal framework within which the Department acts. The majority of my practice has consisted of litigation involving the Federal Government, and in the course of that practice, I have become familiar with the procedural requirements governing executive branch actions, and with the Congressional oversight process. Also, for a number of years, I have served as outside counsel to the FDIC in a variety of litigation matters, and through that representation, I have gained an understanding of the unique policy and legal constraints under which governmental entities operate.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

In a general sense, my experience and training to date have been directed toward solving practical problems through the legal process. The skills that I have developed in listening, analyzing and creative problem solving seem to be useful skills for the position to which I have been nominated. I have learned to handle substantial matters, under considerable pressure, to understand and respect opposing points of view, and to set and keep deadlines. As a result of my litigation experience, I am also accustomed to mastering new substantive topics quickly, and to isolating the essential points and achieving results. More specifically, since 1986, I have represented the FSLIC, the RTC, and the FDIC in various types of litigation matters, and through that experience I have become familiar with many of the generic legal issues facing governmental entities, such as FOIA, Privacy Act and Sunshine Act matters, Federal employee EEO matters, government contracting disputes, interpretation of statutes and regulations, enforcement issues, Federal Tort Claims Act matters, and interagency issues. Through my representation of the FDIC, I have also learned to understand and respect the special ethical and policy considerations that government attorneys must take into account in everything they do. In the course of my practice, I have also assumed various management responsibilities, and currently serve as the head of the Litigation Practice Group, consisting of 40 lawyers and 7 legal assistants, in my firm’s Washington, DC office.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm; association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

I have no such arrangements or agreements with any entity except those described in my answer to Part G, item 7, below.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Please refer to Acting General Counsel Opinion Letter.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

Please refer to Acting General Counsel Opinion Letter. In addition, during 1995–1996, I served as lead counsel in one case against the Department of Transportation, *Mesa Air Group, Inc. v. Department of Transportation*, 87 F.3d 498 (D.C. Cir. 1996). That case concluded in 1996, and I have had no relationship with either Mesa Air Group or the Department of Transportation since that date, until my nomination to be the General Counsel.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Please refer to the Acting General Counsel Opinion Letter.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes, to the best of my ability.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes, to the best of my ability.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes, to the best of my ability.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

If confirmed, I expect that one of my primary responsibilities as General Counsel would be to supervise and if necessary improve the rulemaking process within the Department. I would expect that I would be closely involved in all major rulemaking efforts, with the goal of ensuring that all rules issued by the Department comply with the letter and the spirit of the laws passed by Congress. As part of that process, I would expect to receive and consider communications from Congress, to the extent permitted by law.

5. Describe your department/agency's current mission, major programs, and major operational objectives.

The Department's No. 1 mission with respect to every mode is to promote safety. Other missions include, in general, the need to maintain and improve the transportation infrastructure, increasing transportation efficiency and capacity, thereby relieving transportation congestion, the regulation of transportation modes as necessary to maintain safety and protect the public interest, and the appropriate bal-

ancing between development of transportation systems and the protection of the environment. Additionally, the Coast Guard patrols our borders and interdicts illegal drug shipments and conducts migrant interdiction activities. The Maritime Administration promotes a healthy merchant marine in support of the defense posture of the United States.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated?

See response to Part A, items 17 (a) and (b) above.

2. Why do you wish to serve in the position for which you have been nominated?

First and foremost, I have a genuine desire to be of service to the United States. The actions of the Department of Transportation have a direct impact on the daily lives of the American people, and I would be honored to play a role in helping to shape those actions. In addition, I enjoy new challenges, and I believe that the position of General Counsel would be both intellectually challenging and professionally stimulating.

3. What goals have you established for your first 2 years in this position, if confirmed?

If confirmed, my immediate short term goal will be to learn the basic statutory and regulatory requirements applicable to the operations of each of the operating administrations, and to master the legal requirements that relate to the most important current issues in each mode, to enable me to provide meaningful and helpful legal advice to the Secretary and other officials within the Department. Longer term, I expect to devote substantial time and attention to the Department's process for developing and promulgating regulations implementing the intent of Congress, with the goal of reducing the delays in that process to the maximum extent possible, consistent with all requirements of existing law. I also hope to assist in the process of reducing congestion in all of the transportation modes, with an immediate focus on air travel congestion, while maintaining the highest standards of safety. Associated with the problem of air travel congestion is the problem of consumer complaints, and I would hope to investigate and work out measures that would alleviate the root causes of the increasing numbers of complaints received by the Department.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

The most significant area in which I currently feel deficient is in my knowledge of the substantive law governing the operations of the Department and its operating administrations. While I feel that I have sufficient knowledge of the general procedural requirements applicable to governmental action, I presently have little knowledge of the detailed statutes that set forth the intent of Congress with respect to the specific programs administered by the Department, and the regulations the Department has issued to implement those statutes. Over the past month, I have begun to address that deficiency by studying, asking questions and listening, and if confirmed, I intend to devote a portion of each day to the process of learning the applicable law.

5. Who are the stakeholders in the work of this agency?

Based on my current understanding of the work of the Department, the primary stakeholders are the American people, virtually all of whom have significant personal and economic interests in the safety and efficiency of our transportation systems. Other stakeholders, all of whom have major roles in improving the overall quality of our transportation systems include Congress, the States, local governments, commercial businesses that provide transportation goods and services, and those who are involved in construction and operation of the various parts of our transportation network.

6. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 5?

If confirmed, my role as General Counsel would be to ensure that officials of the Department observe all applicable legal requirements in considering the views of the stakeholders identified above, and give those views appropriate weight in making decisions affecting the operations of the Department. In balancing the views of various stakeholders, the Department should be guided by the intent of Congress as expressed in the statutes applicable to the Department's operations.

7. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced

in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls?

If confirmed, I would be responsible as General Counsel for ensuring the Department's compliance with all Acts of Congress, including the Chief Financial Officers Act. While my authority and ability to direct specific actions in areas of management and accounting would be limited, I would be responsible for advising Departmental officials of the requirements of the Act and for assisting in the development of any necessary measures to ensure compliance. I would do so to the best of my ability.

(b) What experience do you have in managing a large organization?

My management training and experience began, in a very small way, on my first day at the U.S. Naval Academy, and my primary roles during my subsequent service as an officer in the Navy were to lead and manage. While I did not manage large numbers of people, I learned to lead by example, to instill a sense of common purpose and pride in the organization, to earn the respect of my subordinates by learning the details of their work, and to value the contributions of all.

I have practiced law since 1978 at the law firm of Baker Botts, L.L.P., where I am currently the head of the Litigation Practice Group in the Washington, DC office. The Litigation Practice Group consists of approximately 40 lawyers and seven legal assistants. Over the course of the past 20 years, I have had various other management responsibilities within the firm, serving as hiring partner for the Washington office for 9 years, serving on the firm-wide strategic planning committee, serving on the firm-wide compensation committee, and serving on various ad hoc budget and marketing committees. I have a strong interest in law firm management, and I have served on the Steering Committee of the Law Practice Management Section of the D.C. Bar for several years, serving as Co-Chair of the Section during 2000–01. While no law firm experience can compare to the management challenges presented by government service, I believe that I am adequately prepared to assume the management responsibilities associated with the position of General Counsel of the Department.

8. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals.

Performance goals and required reports are a valuable tool for both Congress and the Department. For Congress, the requirement to establish goals and report results provides a concrete way to assess an agency's effectiveness in carrying out its missions. The required reports also provide a way for Congress to identify specific problem areas at an early stage. For the Department, the establishment of performance goals is beneficial because the process of developing those goals requires the Department to consider, discuss and decide among competing priorities and possible policy choices and formulate an integrated and coherent plan for achieving its objectives. In addition, the requirement to submit reports is useful as a catalyst for establishing internal deadlines in the organization and ensuring that necessary actions move forward as expeditiously as possible. The preparation of required reports also serves as a focus for a periodic internal evaluation of the Department's performance, and as an additional incentive to maintain proper management and supervision over the Department's activities.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs?

Congress has an important oversight role in reviewing the performance of executive branch agencies. Where an agency has failed to achieve its goals, an important first question should be whether the agency has sufficient resources to achieve those goals. If so, then the focus should be on whether the agency has been granted, and has exercised, the necessary legal authority to carry out its missions and achieve its goals. If so, then the agency's operations should be reviewed to determine the fundamental causes of the agency's inability to perform satisfactorily. While it is beneficial to review periodically the need for and nature of government programs, elimination, downsizing, privatization or consolidation would seem to be solutions of last resort, to be undertaken only where there is sufficient consensus that the original purposes of the agency are no longer necessary in the public interest, or that the agency no longer has the ability to perform its assigned mission.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

The performance of the General Counsel should be evaluated in at least three areas. First, as Chief Legal Officer of the Department, the General Counsel should

give sound, clear and timely legal advice to the Secretary and other Departmental employees, helping the Department to achieve its operational and policy goals in implementing the statutes adopted by Congress. Second, as a manager within the Office of the Secretary, the General Counsel has a responsibility to monitor the professional training, advancement and recruitment of the legal staff. Third, as the officer within the Department who has the final responsibility for legal interpretations, the General Counsel should ensure that, to the best of his or her ability, the actions of the Department in interpreting its statutory authority are consistent with both the letter and the spirit of the intent of Congress.

9. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

I believe that supervisor/employee relationships should be professional, but as informal as possible while maintaining a businesslike atmosphere. I have always tried to treat others as I would like to be treated, with respect and consideration. I follow a supervisory model that stresses teamwork, open and frequent communications, and inclusion and consideration of all views and ideas in the decisionmaking process. I give credit for successes to my subordinates, and assume responsibility for problems myself. No employee complaints have ever been brought against me.

10. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe.

I have no past experience in working with Congress. If confirmed, I would hope to develop a cooperative and professional working relationship, to ensure that the concerns of the committees and of individual Members are promptly and effectively addressed.

11. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

I believe that the proper relationship between the General Counsel of the Department and the Inspector General is one of independence and mutual respect. While the General Counsel is the final authority on legal issues within the Department, the Inspector General is free to disagree, and is expressly authorized to investigate and make recommendations. As a matter of course, I believe the General Counsel should cooperate fully with the Inspector General at all times, and should make every effort to implement recommendations of the Inspector General regarding matters within the scope of the General Counsel's authority. If confirmed, I would hope to establish a close working relationship with the Inspector General and work cooperatively with the common goal of improving the operations of the Department.

12. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress.

As the Chief Legal Officer of the Department, one of the General Counsel's primary responsibilities is to ensure that all of the Department's actions are authorized by law, and consistent with both the letter and the spirit of the statutes passed by Congress. If confirmed, I will work closely with Members of the Committee and other stakeholders to ensure that their views as to the intent of Congress are given appropriate weight.

13. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

With respect to the Department of Transportation, I believe that safety issues should always be the highest priority. Presently, issues relating to congestion, particularly with respect to automobile and air travel, also are extremely significant, and modernization of the transportation infrastructure is a long term goal. Finally, to achieve those priorities, Congress should ensure that sufficient funding levels are appropriated and authorized.

14. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation.

Yes, to the extent such matters are within my authority as General Counsel. If confirmed, my primary role in this area will be to advise the senior staff of the Department. I would begin to do so immediately, to the extent I am involved in decisionmaking regarding discretionary spending.

The CHAIRMAN. Very good.
Mr. Rutter.

**STATEMENT OF JON ALLAN RUTTER, NOMINEE TO BE
ADMINISTRATOR OF THE FEDERAL RAILROAD
ADMINISTRATION**

Mr. RUTTER. Thank you, Mr. Chairman. I am incredibly honored to have the confidence of the President in being nominated to this important position. I worked for him as his Transportation Policy Director for 6 years when he was Governor and it was the most rewarding period of my career. He is a good boss and a great man.

I am also grateful to be part of the exceptionally capable team being assembled at the Department by Secretary Mineta. My professional career has always been about transportation and I was eager to accept a position that would allow me to work alongside someone who has such a passion for better transportation. I am looking forward to building on my experiences in Texas with freight and passenger rail issues.

I am honored to be associated with the hard-working professionals at the Federal Railroad Administration. I have met many of them in the past few weeks and am impressed with their devotion to their work. Should I be given the chance, I look forward to working with such talented individuals and to meeting many more of them throughout the country.

I am happy that my wife, Melanie, is here with me this morning. When I talk about my better half, I refer to the second half of my life that I have spent with her, for she has made me a better person. She is a gifted school teacher and a blessing to our daughters Sarah and Elizabeth.

I am proud to have been chosen by the President and the Secretary, but I am even more proud to be a husband and father to my family, for they have been willing to join me on this new adventure in their lives.

Well, by the time most speakers say "I will be brief" it is usually too late, and so I will simply mention three things that will be important to me should I be given the honor of being confirmed.

First, I want to continue the work of rail labor, rail management, and the FRA in making railroads safer for those who work on them and for the communities through which railroads travel. While progress has been made, there remains work to be done. Safety is going to be my most important priority if confirmed in this position.

Second, I want to be an advocate for the value of freight railroads in the nation's transportation system. As highway capacity remains constrained, I hope to work with railroads to see that they take advantage of market opportunities to grow their business, which will benefit our nation's transportation network and our economy.

Third, I look forward to being given a chance to work with Secretary Mineta, the Bush Administration, and Congress in developing a national passenger rail policy as this Committee's 1997 Amtrak reform legislation reaches its conclusion.

I have been a public employee all my life and I know, though this job is going to be important, but it is not as important as yours. I respect the fact that you are elected and I am not. I hope to have the confidence of this Committee and also hope this morning can

be the beginning of a productive working relationship with Committee Members and staff.

I have enjoyed visiting with many of the Committee Members and will, if confirmed, be responsive to each of you whenever you need me.

Thank you.

[The prepared statement and biological information of Mr. Rutter follow:]

PREPARED STATEMENT OF JON ALLAN RUTTER, NOMINEE TO BE ADMINISTRATOR OF
THE FEDERAL RAILROAD ADMINISTRATION

Thank you Senator Hutchison, for the kind introduction and thank you Chairman Hollings for giving me the opportunity to visit with the Committee this morning.

I am incredibly honored to have the confidence of the President of the United States in being nominated to this important position. I worked for our President as his transportation policy director for 6 years when he was Governor of Texas, and it was the most rewarding period of my career. He's a great boss and a great man.

I am also grateful to be part of the exceptionally capable team being assembled at the Department of Transportation by Secretary Norm Mineta. My professional career has always been about transportation, so I was eager to accept a position that would allow me to work alongside someone who has such a passion for better transportation. I am looking forward to building on my experiences in Texas with freight and passenger rail issues.

I am honored to be associated with the hard-working professionals at the Federal Railroad Administration. I have met many of them in the past few weeks. I am impressed with their devotion to their important work. Should I be given the chance, I look forward to working with such talented individuals and to meeting many more of them throughout the country.

I am happy that my wife Melanie is here with me this morning. When I talk about my "better half," I refer to the second half of my life that I have spent with this wonderful woman, for she has made me a better person. She is a gifted elementary school teacher and a blessing to our beautiful daughters, Sarah and Elizabeth. I am proud to have been chosen by President Bush and Secretary Mineta, but I am even more proud to be a husband and a father for my family, for they have been willing to join me on this new adventure in all of our lives.

By the time most speakers say, "I'll be brief," it's usually too late, so I will simply mention three things that will be most important to me should I be given the honor of being confirmed as Federal Railroad Administrator.

1. I want to continue the good work of rail labor, rail management, and the FRA in making railroads safer for those who work on them and for the communities through which the railroads travel. While progress has been made, there remains important work to be done. Safety will be my most important priority if confirmed to this position.

2. I want to be an advocate for the value of freight railroads in the nation's transportation system. As highway capacity remains constrained, I hope to work with railroads to see that they take advantage of market opportunities to grow their business, which will benefit our nation's transportation network and our economy.

3. I look forward to being given a chance to work with Secretary Mineta's team, the Bush Administration and the Congress in developing a national passenger rail policy as this committee's 1997 Amtrak legislation reaches its conclusion this coming year.

I've been a public employee all my life, and while this job I hope to have is important, it is not as important as yours. Please know that I respect the fact that you are elected and I am not.

I hope to have the confidence of this committee and also hope this morning can be the beginning of a productive working relationship for us all. I have enjoyed visiting with many of you on this committee and will, if confirmed, be responsive to each of you whenever you need me in the future. Thank you.

A. BIOGRAPHICAL INFORMATION

1. Name: Jon Allan Rutter.
2. Position to which nominated: Federal Railroad Administrator.
3. Date of nomination: May 14, 2001.

4. Address: Not released to the public.
5. Date and place of birth: 11/19/58, Austin, Travis County, Texas.
6. Marital status: Married. Melanie Kaye Moore, May 28, 1983.
7. Names and ages of children: Sarah Michele Rutter, 15; Elizabeth Francis Rutter, 13.
8. Education: (List secondary and higher education institutions, dates attended, degree received and date degree granted.)
Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, attended August 1981 to May 1983, graduated with a Master of Public Affairs, December, 1985; University of Texas at Austin, attended August 1997 to May 1981, awarded Bachelor of Arts, May 1981; Westlake High School, Austin, Texas, attended August 1972 to May 1977, graduated May 1977.
9. Employment record: Transportation Policy Director, Governor's Policy Office, Austin, Texas, March 1995 to April 2001; Deputy Executive Director, Texas High-Speed Rail Authority, Austin, Texas, March 1990 to February 1995; Senior Budget Analyst, Governor's Office of Budget and Planning, Austin, Texas, November 1985 to March 1990; Assistant Committee Clerk, Texas House Committee on Transportation, Austin, Texas, October 1984 to November 1985; Warehouse/Sales, Import Building Products (tile retailer) Austin, Texas, January 1984 to October 1984; Delivery Driver/Sales, Sheridan, Inc. (delivery company) Austin, Texas, September 1983 to January 1984.
10. Government experience: Legislative Intern, Texas House Committee on Transportation, Spring, 1983; Texas State Senate Messenger, Texas State Senate, Spring 1981; Clerk, Texas Health Department, Bureau of Vital Statistics, Summers, 1978–1980.
11. Business relationships: None.
12. Memberships: I belong to a Southern Baptist Church, Hyde Park Baptist Church, Austin, Texas, and have been a member since May 1998. I currently teach an Eighth Grade Boys Sunday School Class, and have worked in the Eighth Grade department for 2 years. Prior to moving my membership to Hyde Park, I belonged to First Baptist Church, Austin. At First Baptist, I was a deacon, Chairman of the Board of Deacons in 1994. I had also served as a Sunday School Teacher (College Department, Adult Couples VI Department) and member of various committees (Committees: Budget Preparation (Vice-Chair), Health and Safety Policy Task Force (Chairman), Personnel, Worship). No other memberships.
13. Political affiliations and activities: (a) List all offices with a political party which you have held or any public office for which you have been a candidate. None.
(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. None.
(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years. None.
14. Honors and awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.) None.
15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.) None.
16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated.

Date of Speech	Location	Group Requesting Speech
February 2001	Austin, TX	Southwest Movers Association Quarterly meeting.
October 2000	Laredo, TX	Camino Colombia Toll Road Corporation groundbreaking.
September 1998 ...	Kerrville, TX	Texas Motor Transportation Association Safety Management Council Fall meeting.
September 1998 ...	San Antonio, TX	San Antonio Transportation Association monthly meeting.
July 1998	Austin, TX	Texas Good Roads/Transportation Association Annual Meeting.
April 1998	Houston, TX	Texas Public Transportation Conference.
April 1997	Austin, TX	Welfare to Work Summit

17. Selection: (a) Do you know why you were chosen for this nomination by the President?

I was chosen for this position: (1) Because the President was aware of my professional abilities when I worked for him as Governor of Texas; (2) Because of my in-

terest in rail transportation; and (3) Because of my ability to work effectively with elected officials, administrative officials and constituents.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Most of my professional career has been spent studying and implementing transportation policy. My experiences with passenger and freight rail issues will help me address challenges facing the Federal Railroad Administration. My other experiences with other modes of transportation will give me a balanced perspective in considering the impacts of rail policies on the transportation system as a whole.

B. FUTURE EMPLOYMENT RELATIONSHIPS

Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes, to the best of my ability.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

Please refer to the Assistant General Counsel Opinion letter.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. None, other than the exercise of my duties as Policy Advisor to the Governor, in which I have been expected to offer information for State legislators and Members of Congress regarding the Governor's agenda.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Please refer to the Assistant General Counsel Opinion letter.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details.

In 1991-2, I was a member of the staff of the Texas High-Speed Rail Authority, and in that capacity, testified in a State district court proceeding brought by Southwest Airlines to rescind the award of a franchise to finance, construct, maintain and operate a high-speed passenger rail system in Texas.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information?

Yes, to the best of my ability. In the event such requests are difficult to meet (for any number of reasons), I pledge to work with the Committee staff to discuss means by which to respond appropriately to the Committee's requests.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?

Yes, I will ensure that the Federal Railroad Administration complies with its legal obligations to protect those who testify from any subsequent discrimination or treatment related to that testimony.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee?

Yes, I will work with Committee staff to arrange for witnesses from the FRA who can provide expertise for the Committee.

4. Please explain how you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

I will do my best to ensure that FRA staff carefully considers the full legislative record of laws that require promulgation of rules by the agency. While the Administrative Procedures Act may limit the amount of direct communication about the rules, I will do my best to provide Congress with information on the timing and substance of rulemaking proceedings begun in response to legislation. I will also work with Secretary of Transportation to apply best practices in administrative procedures in other Federal agencies in quickening the completion of FRA rules.

5. Describe your department/agency's current mission, major programs, and major operational objectives.

The agency's current mission statement is: The Federal Railroad Administration promotes safe, environmentally sound, successful railroad transportation to meet current and future needs of all customers. We encourage policies and investment in infrastructure and technology to enable rail to realize its full potential.

The agency has the following major programs: Promulgation of rules and regulations to promote safe operations of the nation's railroads; Inspection and enforcement of those regulations; Providing financial and technical assistance for high-speed passenger rail systems; Providing financial assistance to Amtrak; Administrative and managerial support of these programs.

6. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes, to the best of my ability.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How have your previous professional experience and education qualified you for the position for which you have been nominated?

(a) Working in the Governor's office has prepared me to work with all governmental levels. This helps me realize that solving problems usually requires cooperation among government agencies. (b) My education helps me understand public sector bureaucracy—its culture, its language, its mores. That will help me get things done. (c) Working in Texas has exposed me to a wide scope of transportation—tens of thousands of miles of highways, rail lines and pipelines, deep water ports, international ports of entry. This will help me understand the role rail plays in an efficient multimodal transportation system. (d) My experience involves an appreciation for safety. I have worked closely with legislators, agency officials, and private sector groups to carefully consider State policies to improve safety of the surface transportation network. My experience in State worker's compensation administration also helps me understand the personal consequences of safety practices. This will make transportation safety a paramount personal concern.

2. Why do you wish to serve in the position for which you have been nominated?

(a) I want to serve the President. After working for him for 6 years, I enjoyed working for him and look forward to doing so again. I consider this nomination the

most important thing I've ever been asked to do. (b) I want to work with the team the President has assembled at USDOT. Given the reputation of the Secretary and Deputy Secretary, I know that my professional stature would be enhanced just by being associated with them. Having met with them, I know that I will be a better person for getting the chance to work alongside them. (c) I want to work with the freight rail industry. Freight railroads, along with pipelines, are the segment of the nation's transportation system that we fully entrust to the private sector. I have enjoyed working with the people involved in this business (the ones who run the companies and the ones who work for them) and look forward to making a positive difference for the movement of goods through maximizing the effectiveness of our rail system. (d) I look forward to contributing to the significant change in national passenger rail policy that will come in the next 2 years. Amtrak's looming financial deadlines and the increasing interest by States in pursuing incremental higher speed rail operations will lead to fundamental choices about the role of the Federal Government in passenger rail systems.

3. What goals have you established for your first 2 years in this position, if confirmed?

(a) Maintain the momentum of the previous 5 years in keeping rail accidents and fatalities to a minimum. (b) Improve the efficiency of the freight rail network. (c) Reauthorize the rail safety program. (d) Participate in the development of a national passenger rail policy. (e) Accelerate the FRA's rulemaking cycle.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

I will work with experienced managers within the agency and within the department to accelerate my understanding of the particular financial and administrative practices of the Federal Government.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when should society's problems be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

Governments serve best when they enforce democratically enacted laws to provide justice in personal and contractual relationships, to promote safety of persons and communities, and to offer persons educational opportunities to choose their own destinies. We can choose to exercise compassion for those in need through governments and other social organizations.

Governments should exercise healthy humility and creativity. Governments should realize that problems are usually more complicated than they seem, and that some solutions may cause unintended negative consequences. Governments should freely innovate and experiment in small steps, much like planting perennials rather than redwoods, so that good results can be replicated and mistakes easily erased.

I close with some observations about some of the characteristics of government programs that may no longer be necessary: No one can say when the program was started, who was responsible for starting it, what the program's goals were when started, or whether the program has ever accomplished or is close to accomplishing those goals; A program may have been authorized but never funded; The beneficiaries of the program have independent resources to accomplish the program's objectives by their own actions; A program may manipulate individual behavior in a manner that subverts other public policy goals.

6. *In your own words*, please describe the agency's current missions, major programs, and major operational objectives.

The agency's most important mission is to protect the safety of the nation's rail system. This means to enhance the safety of goods transport for communities and environments through which railroads pass, the safety of rail passengers, the safety of those who work on and around railroads, and the safety of those who come into contact with the rail system.

The agency's major safety mission is carried out by the hundreds of Federal employees who inspect and support the inspection of the rail system. The agency works with stakeholders to graft common-sense regulations to advance the interests of public safety. The agency explores technologies and strategies to reduce crashes at highway-rail grade crossings. The agency also works with states interested in implementing improvements to their passenger rail systems, leading to higher speed rail passenger services. The agency also provides financial assistance to Amtrak and to freight railroads.

Objectives: The FRA seeks to reduce the frequency and severity of accidents on the rail system; The agency encourages increased efficiency of the rail system for those who use into transport people and goods; The administration will work to make further progress on reducing crashes at grade crossings and reducing

tresspassing on rail properties; The agency will provide technical and policy assistance to persons and governments wishing to implement passenger rail improvements.

7. In reference to question No. 6, what forces are likely to result in changes to the mission of this agency over the coming 5 years?

Events in the short term are likely to affect the FRA's mission by offering opportunities for Congress and the Administration to alter its mission: Reauthorization of the Federal rail safety program; Amtrak's impending financial self-sufficiency deadlines; State pressure for higher speed passenger rail services; Surface transportation program reauthorization.

8. In further reference to question No. 6, what are the likely outside forces which may prevent the agency from accomplishing its mission? What do you believe to be the top three challenges facing the department/agency and why?

In a competitive job market, it will be difficult to attract and retain highly competent employees to accomplish the agency's mission. Agencies with higher turnover suffer productivity and financial losses.

Rail safety results will depend on financial investments by rail companies and on infrastructure investments by State and local governments (grade crossing protection).

The FRA must plan for the consequences of an aging workforce at the agency. Losing competencies and history may affect the agency's ability to accomplish its mission with available staffing allocations.

The agency needs to marshal sufficient intellectual firepower to address serious issues on improving freight railroad financial strength and in considering alternatives in passenger rail policy. Either within the agency or under contract to the agency, the FRA needs resources to conduct research to support the agency's mission.

9. In further reference to question No. 6, what factors in your opinion have kept the department/agency from achieving its missions over the past several years?

By most measures, the FRA has been doing a good job of reducing frequency and severity of rail accidents. While I reserve the ability to correct problems where I might see them, I am more concerned about improving agency operations and meeting organizational objectives.

10. Who are the stakeholders in the work of this agency?

Please refer to No. 11 below.

11. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question No. 10?

Stakeholders in the work of FRA	FRA Administrator's relationship with stakeholders
The administration and Members of Congress	Advise when requested or when I think it is relevant; and follow instructions, particularly those enacted in law.
FRA's management and employees	Lead, coach, advocate and listen.
Management and stockholders of rail companies	Partner in bringing about a healthy, vibrant rail industry; lead in accomplishing safety objectives.
Employees of rail companies and the organizations that represent them.	Listen to concerns and foster cooperative efforts to work for jobs and workplace safety.
State and local governments who invest in rail passenger services and in grade crossing protection.	Partner and assist, rather than dictate and control.
Citizens throughout the country who live near or travel across rail lines.	Listen, educate and respond.
Consumers and businesses whose goods are delivered in whole or in part by rail.	Consider the implications of policies on users of the rail system.

12. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices similar to those practiced in the private sector. (a) What do you believe are your responsibilities, if confirmed, to ensure that your agency has proper management and accounting controls?

I will work closely with the USDOT's Chief Financial Officer to ensure that FRA is complying with agency financial plans and with statutory requirements. As Administrator, I would be responsible for ensuring that taxpayers can clearly see that their tax dollars are being used carefully, prudently and efficiently in carrying out the missions of the agency.

(b) What experience do you have in managing a large organization?

In advising four Governors on transportation issues, I worked closely with the executive management and appointed leadership of the Texas Department of Transportation. Many times, it was my job to get the Department to do something the Governor wanted done. In this capacity, I exercised management discretion to: Discern which level of management was appropriate to engage; Delegate tasks for someone else to accomplish (and follow up on that delegation); Decide when an issue required agency-wide action or policies and when an issue could be resolved independently; and Discover relevant information on identification of a problem and exercise judgment in deciding whether the solution required action within or outside the agency.

13. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals. (a) Please discuss what you believe to be the benefits of identifying performance goals and reporting on your progress in achieving those goals.

I think the goal-setting and reporting process offers benefits both to the Congress and to the FRA. For Congress, this offers accountability on the issues that matter most. For the agency, this provides a clear direction to follow and a clear standard by which to measure progress.

(b) What steps should Congress consider taking when an agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing or consolidation of departments and/or programs?

This is obviously a matter of Congressional discretion. However, I would work with the FRA's authorizing and appropriating committees in both the House and Senate to work together to diagnose the problems and prescribe solutions. Consistent failure to achieve goals would require longer-term solutions, such as change in management, outsourcing or consolidation of functions.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

I will do my best to ensure that agency performance goals are met; Be responsive and helpful to the Administration and to Members of Congress; Maintain high standards of ethical probity and personal integrity; Be available to stakeholders; Strive to learn about the agency and the issues we address by seeing firsthand (to the extent possible and financially feasible) how things work.

14. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

I will strive to learn enough about persons under my direct supervision to know how they will function best—who needs degrees of freedom and who needs closer supervision. I recognize that all people are individuals and will work to provide a working environment that allows people the freedom to achieve and create. I will instill a sense of professionalism among every layer of the organization, and will try to create opportunities for personal advancement and growth.

I am not aware of any employee complaints that have been brought against me directly.

15. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe.

As Transportation Policy Director for Governor Bush, I worked with the Texas congressional delegation (mainly at the staff level, and with the assistance of Washington-based State employees from the Texas Office of State-Federal Relations and the Texas Department of Transportation). During the 6 years I worked for Governor Bush, I spent the most hours providing congressional staff with information on the Governor's ISTEA/TEA-21 reauthorization priorities. I also worked with congressional offices on NAFTA trade corridors, border crossing issues, and port and waterway matters.

I have worked closely with members of the Texas Legislature for most of my professional life. While I recognize the vast difference in responsibilities between that body and Congress, I also realize there are similarities. I have experience helping legislators resolve problems for their constituents, and will work to help Members of Congress similarly in FRA matters. I understand that you have been elected and I have not.

16. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

I will work with the Secretary and Deputy Secretary to cooperate with the Inspector General's investigations and to solve problems he identifies. The Inspector General has prepared some valuable reports on matters under the jurisdiction of FRA,

and I will strive to work closely with him and his staff to take advantage of their expertise and seek their advice.

17. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your department/agency comply with the spirit of the laws passed by Congress.

The title "Administrator" implies that I will respond to direction given to me by others (those who administer give feet to the ideas and direction of others). In this case, I would be responding to instructions from the Executive branch and from the Legislative branch. I would also seek to instill an organizational culture within the FRA that sought and valued contributions from all stakeholders.

18. In the areas under the department/agency's jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

Reauthorization of the Federal rail safety programs; Development of a national passenger rail policy and identification of organizational and intergovernmental structures to achieve those policy objectives; Consideration of rail issues during surface transportation reauthorization in 2003.

19. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending based on national priorities determined in an open fashion on a set of established criteria? If not, please state why. If yes, please state what steps you intend to take and a timeframe for their implementation.

Yes, I will to best of my ability. Some of my ability to distribute program funds in an open fashion based on established criteria will depend on the actual freedom afforded me by the annual appropriations process.

The CHAIRMAN. Thank you.

Ms. Engleman, relative to pipeline safety, a recent article, a report last year by the General Accounting Office found that the number of major pipeline accidents, defined as those involving death, injury, or property damage, rose by 4 percent a year during the 1990s. Then it goes on to relate: "In recent years, Federal regulators have sharply curtailed the use of fines as an enforcement tool." What are your thoughts relative to fines?

Ms. ENGLEMAN. Well, sir, I believe also in that GAO report it indicated the 4 percent increase in pipeline accidents and, while it was to some degree augmented by the fact that there was a 10 percent increase in overall pipeline mileage and population growth near the pipelines, that does not change the fact that the accidents are increasing.

I think it is incredibly important to enforce the rules and regulations that we have in place stringently. When we create rules and regulations, there should be open communication. Once they are in place, they should be strictly enforced. I am inspired by the fact that RSPA just 2 days ago announced a \$2.52 million fine against El Paso Pipeline in Texas for the Carlsbad, New Mexico, accident, which you know occurred in 2000. That was a natural gas explosion that took over 12 lives in an extended family, including 2 6-year-old twins.

This cannot occur, and when we have these problems we should use every possible means of enforcement, education, and have people understand that when accidents happen consequences will follow.

The CHAIRMAN. Very good.

Mr. Van Tine, prior to Secretary Mineta coming on board, we had a hearing relative to this fracas going on between Ford and Firestone on tires and safety. We looked up and found at the Committee level over at NHTSA, the National Highway Transportation Safety Administration, that in the last 5 years, for example, on vehicles there had been some 99 million recalls. Quite a figure. Yet

at the same time, all were voluntary, none directed by NHTSA itself.

See if you can help wake up that organization, because right now they are arguing whether the tires are safe or not safe being replaced, and it is taking weeks to find out and everything else. They ought to have that on the record immediately, right now.

I do not know what they do, just eat and sleep and run out and investigate and then eat and sleep some more and wait for other things to happen, and then run out again and investigate. This crowd is crazy up here about investigations, but nothing about doing their work.

Mr. VAN TINE. Mr. Chairman, within the past couple of weeks I have gotten around to the Chief Counsels' offices in each of the operating administrations and I have met all of the lawyers who work at NHTSA and I have a sense of what they do, and they do do a little more than eat and sleep.

But Dr. Runge has been nominated to be the new Administrator of NHTSA, and I will commit to you that I will work with him and his Chief Counsel to ensure that NHTSA carries out its responsibilities in a forceful manner.

The CHAIRMAN. Then on one other score, predatory pricing. You are familiar with the recent American Airlines decision, and it appears to this Senator if there ever was predatory pricing, in that case it was just that. There is a technicality in antitrust law, Robinson-Patman, in pricing, and we do not have that technicality with the Department of Transportation. You have got the authority to issue guidelines on what the Department constitutes as predatory pricing.

Will you get onto that immediately, if you do not mind, because in addition to controlling all the hubs, where no one can get in because they can engage technically in predatory pricing, and de facto—I mean, there is not any question about it—run out all the competition and continue with the lack of service and high pricing and everything else of that kind. It is a real job at the committee level here in government to try to develop competition in the airline service. But that is one of the little things that we need to get onto, and the Department has that authority and I hope you will get behind that one also.

Mr. VAN TINE. Yes, sir. I know that ensuring and maintaining competition is a priority of this Secretary and the Deputy Secretary. I have again met the attorneys in the Office of General Counsel who specialize in antitrust issues and I have spoken with them. I have also met the enforcement attorneys in the Office of General Counsel and I can assure you again that I will actively pursue the predatory pricing issue and look forward to working with you on that, sir.

The CHAIRMAN. Very good. We appreciate the appearance of each of you this morning. The record will stay open for further questions by the Committee, and we will try our best to move your confirmation as quickly as possible.

Thank you very much. The hearing will be in recess subject to the call of the chair.

[Whereupon, at 10:10 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. RICHARD G. LUGAR,
U.S. SENATOR FROM INDIANA

I am pleased to have this opportunity to introduce Ms. Ellen G. Engleman to the members of the Senate Committee on Commerce, Science and Transportation.

I have known Ellen Engleman since 1990, when she was selected as a distinguished member of the first class of the Richard G. Lugar Excellence in Public Service Series. This program selects 15 women in the State of Indiana each year for leadership training for elected and appointed positions in public service.

After serving as a public affairs executive at GTE in Indianapolis, Indiana, Ellen served as a Congressional fellow in my Washington office in 1992 where she utilized her excellent research capabilities, organizational skills, and writing to make her a vital part of my legislative and administrative operation.

Most recently Ellen has been the President and Chief Executive Officer of Electricore, Inc. This is a non-profit research and development consortium located in Indiana which develops advanced transportation and energy technologies through Federal private/public partnerships. Through this consortium Ellen has established herself as a thoughtful strategic planner and resourceful director and liaison to Federal, private, and academic organizations.

Ellen's unique background blends experiences from the fields of business, transportation, legislation and law. She has used her talents and intellect to bring people together for a common cause in order to effect positive change. I have always been impressed by her high level of dedication and commitment to public service.

Mr. Chairman, I thank you for this opportunity to introduce Ellen G. Engleman to the Committee on Commerce, Science and Transportation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
SAMUEL W. BODMAN

The Advanced Technology Program (ATP) is an industry-led, competitive, and cost-shared program to help the U.S. develop the next generation of breakthrough technologies in advance of its foreign competitors. ATP contracts encourage companies to undertake initial high-risk research that promises significant widespread economic benefits, although the program does not support product development. The National Academy of Sciences' comprehensive report on ATP issued earlier this month is the most recent study of this program. Mr. Bodman, the Department of Commerce asked to reprogram this year's funding for new ATP awards and use that funding in FY 2002. That request was denied.

Question 1. Will you be able to issue the full amount currently available for new awards this year?

Answer. It is my understanding that the Advanced Technology Program (ATP) intends to evaluate each batch of applications independently. I have been told that fourteen potential awards (Batch 1) are currently being reviewed by the ATP selecting official. Unfortunately, it is premature to speculate how much money will be spent this fiscal year since the Program is conducting its first rolling applications process.

Question 2. When will you begin to issue new awards?

Answer. The ATP expects to make its recommendations for Batch 1 to the Acting Director of NIST by mid-July. The recommended proposals will then be subject to review by Secretary Evans. Finally, these proposals will require review by both the legal and grants offices prior to the commitment of the funds.

Question 3. How many rounds of competition will there be and what is your timeline for completing the awards process for each round prior to the end of the fiscal year?

Answer. I understand that ATP is conducting technical and business reviews for Batch 2 and 3 and it is expected that recommendations to the Acting Director of NIST will occur by August 31st. Since the rolling submission competition remains open through September, as published in the *Federal Register*, those proposals which are submitted after July 10th, Batch 4, will not be evaluated in time to make awards during this fiscal year.

Question 4. Is the United States in danger of losing its ability to conduct longer-term research in job-creating technologies, and is this a problem in a world where other governments consider it not only acceptable but essential to support their industrial technologies?

Answer. Historically, much of the corporate research and development (R&D) funding in the United States focused on longer-term technologies. Often, working with universities and the government, in the less competitive world economy of the past, American companies could afford the research that led to the transistor, fiber optics, modern integrated circuits, and biotechnology. In today's very competitive economy and very demanding stock market environment, however, both large companies and even many venture capitalists must focus their limited research dollar on safer, short-term projects that will pay off quickly.

Industry continues to focus more on downstream process and product development and away from basic and applied research. Private investors are becoming more critical of technically risky research ventures. The United States spent \$37.9 billion on the performance of basic research in 1998, \$51.2 billion on applied research, and \$138.1 billion on development. These totals are the result of incremental increases over several years.

The United States cannot remain complacent while most of our industrial competitors, including the European Union, the United Kingdom, France, Japan, and Canada have industrial programs designed to promote technological development and are increasing their financial commitment to them. All of these programs are viewed as appropriate vehicles to promote innovation.

As you are well aware, there is an on-going debate on whether a funding gap exists in the United States between basic research and innovation. According to Dr. Lewis Branscomb of Harvard University, we do not know whether such a gap exists in the conventional sense of the word. Yet I believe that in order to remain competitive, it is necessary to ensure critical technologies are not lost. To make this happen, the United States government should be prepared to utilize various partnerships with industry, universities, and its national laboratories to conduct the longer-term research vital to U.S. economic growth.

Question 5. Do we need programs such as DOC's Advanced Technology Program (ATP) to help American industry stay at the cutting edge?

Answer. The private sector is facing a set of challenges that did not exist when current federal R&D priorities were set: an increasingly competitive global economy; shorter product life cycles; and advanced technologies being created and adopted by competitors worldwide. For example, funding for total research rates the U.S. sixth behind the other G-7 industrialized nations. Private investors are, increasingly, viewing early stage technology as too risky for investment. Government continues its significant and strong support of basic research, and the private sector backs downstream developments.

ATP can fill a critical gap in bringing advanced technologies to market, since it cost-shares funding of early stage, applied research that companies and private investors consider too risky for captive investment. In addition, the ATP catalyzes the formation of strategic alliances between industry, universities, and states; partnerships are a promising mechanism for competitive growth.

Question 6. How can you help Secretary Evans and me build support for the program?

Answer. As you know, the Secretary is currently evaluating ATP and believes that certain changes could enhance the Program to better serve the Nation's needs. If confirmed, I intend to support the Secretary in his review and to offer my expertise as a chemical engineer and a former chief executive officer to help reform and reshape this valuable program.

Question 7. What should the role of the States be in supporting innovation?

Answer. States currently support innovation in a variety of ways. They support technology incubators housed at their universities, provide tax relief to companies who choose to locate or relocate to a particular state, and often provide seed money for promising technologies. Certainly, these efforts are necessary and should be encouraged to continue.

Yet, from a national perspective, this is not enough. Because state governments tend to be interested in regional economic development and tend to invest in close-to-market solutions, they often miss investments in the truly revolutionary tech-

nologies that will keep the United States at the leading edge. They often ignore possible solutions that can only be provided by a national program such as the Advanced Technology Program.

CARCON

Question 1. What was Carcon? How did you become involved with the company? When did you buy stock in the company and how much stock did you purchase? Did you know the other investors in Carcon? Did you ever serve as a director of Carcon, or did you ever attend any meetings of the Board of Directors?

Answer. Carcon was a private corporation formed as an investment vehicle under the leadership of David Carmichael and William Connors of Houston, Texas. I participated in a private offering and purchased \$50,000 worth of stock in 1985. As I recall, I was one of twenty or more investors who participated in the offering. I personally knew Carmichael, Connors, and Thad Hutcheson, then a partner of Baker and Botts in Houston, who founded the company. I do not know who the other investors were although I believe many of them were in the Houston business community and I probably knew a few of them. I did not serve as a director of Carcon, nor did I attend any meetings of Carcon's Board.

Question 2. Did you ever have knowledge of any connection between Carcon, a Delaware Corporation, and Tokai Carcon Corporation of Japan?

Answer. I have no knowledge of any connection between Carcon and Tokai Carcon Corporation.

Question 3. What was Harkon and what was your involvement with Harkon?

Answer. I have no knowledge of Harkon.

Question 4. Were you ever aware that Harkon was an investor in Carcon? If so, when did you gain this knowledge? Were you ever aware of who were the beneficial owners of Harkon?

Answer. I have no knowledge of Harkon and am unaware that Harkon was an investor in Carcon.

Question 5. What was American Oil and Gas Company and what was your involvement with American Oil and Gas Company?

Answer. American Oil and Gas Corporation (AOG) was an operator of small intrastate gas transmission lines in Texas. When Carcon merged with AOG, I became a share owner of AOG. I had no other involvement with AOG until Cabot's transaction with AOG in 1988, at which time I became a director of AOG.

Question 6. At the time that American Oil and Gas merged with Carcon, what was your understanding of who the principal investors were in American Oil and Gas? When did you become aware that American Oil and Gas would acquire Carcon?

Answer. At the time of the Carcon-AOG merger, AOG was a publicly-owned corporation with its shares traded on the American Stock Exchange. To the best of my recollection the General Electric Company was a major shareholder of AOG. I would estimate that I became aware of the AOG-Carcon merger in late 1985. In any case, it was well before my joining Cabot in 1987.

Question 7. Please describe the process by which Cabot Corporation invested in convertible preferred stock and stock warrants in American Oil and Gas Company.

Answer. Prior to my arrival at Cabot Corporation in 1987, Cabot had purchased Westar, an Amarillo-based operator of gas transmission properties. After my arrival and after about a year's study, Cabot's management concluded that Cabot should withdraw from the gas transmission industry and initiated an auction process under the leadership of Goldman Sachs to sell Westar. AOG was the winning bidder in the auction, Westar was sold to AOG, and Cabot Corporation received convertible preferred stock and warrants in AOG.

Because I, as Chairman of Cabot, had owned shares of AOG prior to my employment at Cabot, a Special Committee of Cabot's Board, consisting of three outside Directors, reviewed the auction process and any potential conflicts caused by my ownership in AOG. They concluded that the sale of Westar to AOG was in the best interest of Cabot's shareholders. Over time, that judgment proved to be correct.

Question 8. Have you ever met, or have you ever had any businesses dealing with any of the following individuals: Haroon R. Kahlon, Khalid Bin Mafouz or James R. Bath? If so, please provide dates and places of meetings.

Answer. To the best of my knowledge, I have never met Messrs. Kahlon, Mafouz, or Bath. I have never had any business dealings with any of them.

Question 9. During the period that you were shareholder in Carcon, what, if any, was your understanding of Khalid Bin Mafouz' involvement with each of the companies listed above? (Carcon, Harkon, and American Oil and Gas).

Answer. I had and have no knowledge of Mafouz' involvement with Carcon, Harkon, or AOG.

Question 10. Did you ever become aware of the dissolution of Harkon? If so, at the time of Harkon's dissolution, were you aware that Khalid Bin Mafouz was under indictment by law enforcement authorities with the United States? Were you ever aware that a restraining order had been placed on the movement of his funds in the United States?

Answer. I was and am unaware of Harkon's existence or its dissolution. I know nothing about Mr. Mafouz, his indictment, or anything related to his financial dealings.

Question 11. Did you ever have any contact with or involvement with any officer or director of the Bank of Credit and Commerce International?

Answer. To the best of my knowledge, I have never had contact or involvement with any officer or director of the Bank of Credit and Commerce International.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
SAMUEL W. BODMAN

Question 1. The Cabot Corporation has 40 manufacturing facilities in 25 countries. As its Chairman and CEO, you are very familiar with the international environmental regulations. The President has indicated that the U.S. will not sign the Kyoto Protocol. Several other countries have indicated a desire to proceed with ratifying the protocol. What impact will the absence of the U.S. in the final negotiations have on the ability of U.S. industries ability to compete in those countries which may sign the Protocol?

Answer. From what I understand, one cannot reasonably predict the possible impact of the Kyoto Protocol on U.S. industries if the United States does not become a party, because one can only speculate if in fact the Protocol will become effective and if so, what its obligations would entail and which countries would be party to it. In general, however, it does not seem likely that U.S. multinational companies would incur any competitive disadvantage concerning their operations in countries that implement the Protocol. Companies choose to invest in particular countries for a variety of reasons, including such factors as market access, availability of natural resources, labor, and technology, and general business climate. Environmental regulations may or may not be a significant factor in an investment decision. In addition, new regulatory requirements flowing from the Protocol in a particular country presumably would affect only companies generating greenhouse gas emissions, and would apply to all such companies regardless of the nationality of their ownership. Thus, it would seem that within Protocol countries the relative competitive impact of the Protocol on U.S. companies would not likely be great. Operations in a Protocol country—regardless of ownership—might be competitively disadvantaged compared to operations in a non-Protocol country that does not have similar obligations (such as China or India), but this would depend also on a variety of factors, including the nature of the obligations in the Protocol country and the presence or absence of similar obligations in those non-Protocol countries where competitors to the company are located.

Question 2. Given your experience as an investment banker and an industrialist, what changes would propose to the government's patenting and licensing process? How can we improve the technology transfer process to get more of federally sponsored research results into the marketplace?

Answer. The Office of Technology Policy within the Department's Technology Administration issued a report last year (*Tech Transfer 2000*) that highlighted many ways to improve the process of moving federally sponsored research results into the marketplace. The ideas identified in that report are important; they include providing companies with better information management tools to more quickly and efficiently identify particular areas of Federal lab knowledge and expertise, and streamlining the intellectual property protection rules, contractual mechanisms, and management policies to reduce the potential for friction among collaborating parties. If confirmed, I intend to explore further the merits of these ideas and others, and how to put them into practice.

Question 3. Over the years, we have heard claims of how some countries have used technology standards as trade barriers. In your experience, have you seen any attempts at this? As Deputy Secretary of Commerce, do you have any plans to investigate this issue further?

Answer. It has indeed been commonplace for nations to use the standards setting process as a trade barrier to foreign competition. From wireless technologies to aircraft, American companies and inventors face the constant challenge of building

products to a variety of specifications. The U.S. Trade Representative's 2001 National Trade Estimate Report provides many examples of other nations' using technology standards as barriers to trade. If confirmed, I would hope to leverage the Department's many assets and resources in standards and trade to assist American businesses in addressing this challenge.

Question 4. The Secretary of Defense has placed a high priority on space as a future national security interest. What impact will this increased emphasis have on the emerging commercial space industry?

Answer. The high priority on space emphasized by Secretary Rumsfeld presents an opportunity for the U.S. commercial space industry. As noted in the Rumsfeld Commission report, a robust commercial industry is critical for our national security. For example, the Commission stressed the need for our commercial remote sensing industry to be one generation ahead of the rest of the world; that is a strategy that both NOAA and TA's Office of Space Commercialization are working to implement. The DoD's commitment to space also can benefit commercial sectors in other related areas, by assuring, for example, that our launch base and range infrastructure is the best in the world and that our satellite navigation systems are without peer. In addition, DoD's need for a highly reliable launch-on-demand capability could present another area of opportunity for the commercial sector.

Question 5. In your response to earlier Committee questions, you stated "... many of the U.S. regulations and laws were developed at a time when American commerce dominated the world. With rare exception, this dominance no longer exists. Global competition dominates the world landscape, and U.S. regulations and laws should recognize that." What are some examples of regulations and laws that should be changed to reflect this reality?

Answer. The Export Administration Act (EAA) is an example of a law that needs to be modified to reflect the fact that American goods and technology no longer dominate the world. The EAA has not been substantially revised since before the end of the cold war. The Senate Banking Committee recently reported out legislation (S. 149) that would, among other matters, remove export restrictions on technology that is widely available in foreign markets, and delete the provision in the National Defense Authorization Act that uses MTOPS (millions of theoretical operations per second) as the measure for controlling exports of computers to certain destinations. These improvements, and others, will allow American businesses to enhance their competitiveness overseas. The Administration has expressed support for S. 149, as reported from the Senate Banking Committee.

Additionally, I believe that the antitrust laws should be re-examined in light of changes brought about by broader global competition. Many of our "old economy" industries would probably be more competitive globally if they were permitted/encouraged to consolidate.

Question 6. Mr. Bodman, the 2001 Department of Commerce budget is \$5.1 billion. The NOAA budget comprises over half of that funding. The National Marine Fisheries Service, the NOAA agency responsible for fisheries, will receive approximately \$519 million. Of that, \$377 million was earmarked for special projects. While much of this funding will go to worthwhile fisheries programs, other equally important research and management programs will not be funded because a fair and equitable allocation process was circumvented.

Mr. Bodman, sustainable and competent management of our nations fisheries is extremely difficult. It is made unnecessarily more difficult when the routine, merit-based prioritization spending process is ignored. How do you plan to address this growing problem at the National Marine Fisheries Service and throughout the rest of the Department?

Answer. The President's fiscal year 2002 Budget Request for NOAA is \$3.15 billion, which includes \$598 million for the National Marine Fisheries Service (NMFS). The President's fiscal year 2002 Budget Request for NMFS follows Congressionally enacted levels in fiscal year 2001 and invests in core programs needed for NMFS to meet its mission to manage fisheries, rebuild stocks, and protect endangered species. If confirmed, I intend to work closely with the Congress to focus spending priorities on improving science, management, and enforcement programs at NMFS and core missions throughout the rest of the Department.

Question 7. A recent Senate report identified the lack of experienced staff as limiting the ability of the Commerce Department and other agencies to monitor and enforce trade agreements and to obtain favorable resolutions of compliance problems. The report also states that increasing applications and inexperienced staff at the Patent and Trademark Office result in undeserving patents slipping through which in turn poses a critical threat to an economy that runs on intellectual property. With the upcoming wave of retirement in government personnel, how would you propose to address these significant workforce management problems?

Answer. Workforce management issues are clearly of deep concern to the President and to Secretary Evans. I share their concern. Your question underscores the challenges we will face within the Department, specifically, our ability to recruit key talent, retain our most skilled workforce, and prepare for what appears to be a potentially significant drain of experience through retirement losses.

To recruit key talent, we must pay attention to the marketplace and to what is needed to attract recent college graduates to our workforce. I have been told that Commerce has some initial efforts underway, having recently established Memoranda of Understanding with nine selected universities regarding recruitment of their graduates. It is also my understanding that Commerce has deployed an automated hiring process which allows people interested in Commerce jobs to apply over the Internet. These are good first steps, but I am sure there is much more we can do. I will be particularly focused on ways we can foster recruitment of scientists and engineers, skill sets critical to the Department.

To make certain that we have a skilled workforce, we must ensure that appropriate, timely training is provided. I understand that several of Commerce's bureaus have implemented sound training approaches that meet this objective. For instance, both Census and PTO have onsite corporate universities to upgrade the skills of their employees. We need to examine how to do better in this area, especially if we turn our attention to using innovative, Internet-based approaches that enable us to reduce costs while training large numbers of employees.

The retirement wave that may be coming appears to be both a threat, and an opportunity. I have been told that within the next 4 years, close to 1 out of 3 Commerce employees will be eligible for retirement, and that current models predict that we are likely to lose 20 percent of our workforce to retirement by fiscal year 2005. Should this happen, we will face a serious loss of experienced staff, most likely at the highest senior levels. We will need stronger approaches to managing the overlap of new and seasoned workers. On the other hand, the large number of potential vacancies is a superb opportunity to re-think both the number and types of jobs we need to deliver service to the public. We can undertake considerable restructuring while minimizing any negative impact on our workforce.

I have not had a chance yet to read the report you are citing, but I will do so. I can assure you that Secretary Evans and I are fully committed to examining and addressing the human capital challenges we will face in the Department.

Question 8. One of the major functions of the Department of Commerce is to ensure the global competitiveness of U.S. companies. One of the major administrations that help to achieve this goal is the Technology Administration. Based on your experience in the private sector, could you please describe how the Technology Administration's processes and functions can be improved to further help American businesses?

Answer. The Technology Administration is indeed well-positioned to help ensure the global competitiveness of U.S. companies, and I am confident it will live up to this mission under Secretary Evans. I believe the Technology Administration should focus its resources on several key areas including: Global Technology Strategies: comparing U.S. science and technology strategies to those of other global leaders; Emerging Technology Policies: anticipating barriers to the future success of critical emerging technologies and recommending policy solutions; Technology-Led Economic Development: assisting state, regional and local efforts to leverage technology strengths and innovation assets to drive economic opportunity and job growth; Technology Transfer: continuing to advise policymakers on ways to maximize commercialization of technologies developed by or in partnership with the Federal Government; Critical Current Issues: working with policymakers in Congress and throughout the Administration to address current policy challenges including workforce supply and demand, barriers to e-commerce and the growth of critical infrastructure platforms, such as broadband networks.

Within these broad areas, the Technology Administration will need to identify specific activities or efforts where it can make the maximum impact with its limited resources. TA leaders will need to define clear and achievable projects with measurable goals.

Question 9. In your answer to the Committee's pre-hearing questionnaire, you emphasize the importance of education in a number of answers. One great threat to American competitiveness is that the average American student is scoring much lower than foreign students on math and science tests, and that America is not turning out enough scientists and engineers. Based on your experience, what should the Department of Commerce do to help improve the scientific and technological aptitude of American students, and get more American students interested in math, science, and engineering degrees?

Answer. The science and mathematics achievements of American students have increased in the last two decades. Nevertheless, the math and science performance of many American students remains below that of global competitors, and improvements are needed. While states and localities must shoulder most of the burden for improving our students' math and science performance, the Federal Government is supporting their efforts through initiatives focused on improving teacher quality, upgrading curricula, increasing accountability, providing learning support for students who need extra assistance, and integrating technology into the classroom.

In nearly every job field, the demand for technological expertise is growing, and skilled jobs involving science and technology are some of the best paying jobs our economy offers. The Commerce Department can play a role in helping prepare young Americans for these opportunities. For example, many young people lack knowledge of and interest in technical careers, and fail to stay with the math and science courses needed to prepare them for these jobs. In response, the Commerce Department is working with the National Association of Manufacturers in a national campaign to provide information on technical careers to students in middle school, the time when many young people form their opinions about careers. We have also led a multi-year initiative to focus national attention on meeting the Nation's demand for information technology (IT) workers. This year, we are conducting a review of IT worker training programs to help identify the types of programs that provide workers with the marketable IT skills employers want. Finally, business leaders have made it clear to us that improving workforce quality is among their highest priorities. In response, the Commerce Department is working to expand its role as an advocate for business concerns in Federal education and training efforts.

Question 10. The Secretary of Commerce, following the President's budget outline, has suspended new funding for the Advanced Technology Program, pending a re-evaluation of the program. What steps should the Secretary take in order to thoroughly review and assess the effectiveness of this program?

Answer. It is my understanding that the Secretary has not suspended the "rolling" Advanced Technology Program competition this year. The Secretary has, however, initiated a thorough review of the program to ensure that it is fulfilling its original goal of funding the development of high-risk technologies. Areas of concern include the participation of large companies as single applicants and the restricted role of universities, among others. If confirmed, I intend to support the Secretary in this review and to offer my expertise as a chemical engineer and a former chief executive officer to help reform and reshape this program.

Question 11. A few members have recently suggested establishing a Department of Trade within the Department of Commerce, to oversee and coordinate all trade policy and address all trade-related concerns. I don't believe the Department has been consulted regarding this matter. What is your take on such a suggestion?

Answer. I am not aware of the specifics of this proposal, and at present I do not have sufficient information to have an opinion on the best way to organize the trade responsibilities of the executive branch. I do know that we work closely with U.S. Trade and the other trade policy agencies through the National Economic Council process. On the trade promotion side, I share Secretary Evans' desire to strengthen coordination among the trade promotion agencies. In that regard, one of his goals is to reinvigorate the Trade Promotion Coordinating Committee (TPCC), so that it can provide recommendations to improve customer satisfaction and increase coordination. Since the Department of Commerce chairs the TPCC, Secretary Evans and I have a strong interest in strengthening coordination across the government and are interested in your thoughts as to how we can do a better job.

Question 12. The Administration seems to be walking a fine line between enforcing current anti-dumping and countervailing duty laws and abiding by WTO and other trade agreements. Does the Department plan to develop an overall strategy to coordinate between these often opposing forces?

Answer. The Bush Administration policy is to administer U.S. antidumping and countervailing duty laws fairly, impartially, and in accordance with U.S. law and our obligations under the WTO Agreements. I see no reason for implementation of that policy to conflict with U.S. obligations under WTO Agreements.

Question 13. Recent news report highlight how problems with voting machine reliability have created public uncertainty regarding our election system. Considering the National Institute of Standards and Technology's role in establishing technical standards, what role should NIST play in establishing rigorous standards for voting systems and the election process to ensure public confidence in the American election system?

Answer. If the Congress determines that the Federal Government should play a role in the development of standards for voting systems, NIST has expertise that could be helpful in implementing that role. Specifically, and probably most relevant

to voting system standards, NIST has extensive experience in working with non-governmental standards development organizations (SDO's) in their development of standards. Although NIST itself promulgates technical standards for Federal agencies to use in connection with their computer systems that handle sensitive but unclassified information, it would not be appropriate for a Federal agency unilaterally to promulgate standards for voting systems, because State and local governments are in the best position to determine what works best for their communities.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO
ELLEN G. ENGLEMAN

PIPELINES

Question 1. As you know, the Senate passed a pipeline safety reauthorization bill earlier this year. There is a great deal of interest in improving the oversight and enforcement activities of the Office of Pipeline Safety. What are your plans for working with both the House and Senate to advance this legislation?

Answer. I know the Department looks forward to working with the Congress to complete this important work this year, and has established it as a priority element in our National Energy Policy, reflected in the Administration's recent call for legislative action. Critical to these mutual efforts are statutory mandates for pipeline integrity management programs and programs that promote safety, including public education and training. Reauthorization must include funding levels sufficient to strengthen the Office of Pipeline Safety and its State pipeline safety partners. RSPA must remain committed to using all the incentives at its disposal—preventative education and training activities as well as penalties to ensure the safety and reliability of the Nation's pipeline network. RSPA will work with the pipeline industry and all other affected stakeholders to improve safety and reliability, but must maintain its independence and will take strong action whenever warranted.

Question 2. There are a number of pending rules that need to be finalized. In addition there are a number of rules that are long overdue. What commitment can you make about moving this process ahead?

Answer. The Office of Pipeline Safety is attacking the huge task of improving the safety of our nation's pipelines on several fronts simultaneously, including completing rulemakings, strengthening our enforcement efforts, rebuilding state partnerships, and building a collaborative research and development efforts. In the FY 2002 budget, the Administration seeks to increase significantly the resources available to address the pipeline safety mission. In the past year, OPS has completed a number of mandates. OPS developed a national integrity management program, finalized integrity requirements for large oil pipeline operators, proposed integrity requirements for small oil pipeline operators, and outlined regulatory integrity concepts for gas operators. OPS finalized rules defining unusually environmentally sensitive areas. OPS proposed improvements to corrosion standards, and also proposed rules for improving accident reporting, including lowering the reporting threshold for spills to five gallons, which is critical to improve analysis of safety problems that cause pipelines to fail. I am committed to maintaining this progress and, with additional resources, taking bold steps to complete any outstanding mandate as well as addressing other pressing communications, education, and damage prevention needs.

Question 3. The Office of Pipeline Safety recently assessed a \$2.52 million fine, the largest civil penalty ever sought by a safety agency, against a natural gas transmission pipeline operator for its role in the explosion last year in New Mexico that killed 12 people. Last year the agency assessed a record \$3 million fine against a liquid-pipeline operator for safety violations that led to the June 1999 explosion in Bellingham that killed 3 boys. In recent years, federal regulators have curtailed the use of fines as an enforcement tool. The agency says it is now reconsidering that approach. Do you believe these penalties are an effective tool in preventing accidents and encouraging safer pipeline operations?

Answer. Yes, I think the Office of Pipeline Safety (OPS) has to make full use of all enforcement tools available. As I discussed in my response to question number one, RSPA must remain committed to using all the incentives at its disposal—preventative education and training activities as well as penalties to ensure the safety and reliability of the Nation's pipeline network. RSPA will work with the pipeline industry and all other affected stakeholders to improve safety and reliability, but must maintain its independence and will take strong action whenever warranted.

Question 4. A report last year by the U.S. General Accounting Office found that the number of major pipeline accidents rose by about 4 percent a year during the

1990s. With the introduction of President Bush's energy plan which calls for faster federal reviews of pipeline projects and the construction of 38,000 miles of new natural-gas transmission lines, do you think that the Office of Pipeline safety should be playing an increased role?

Answer. Yes, the Office of Pipeline Safety currently has an important role to play in evaluating the safety of the design and construction of these projects, along with their state agency partners. To better serve the safety goals of the Department, I believe that more activity should be accomplished—especially in the role of public safety education and outreach.

HAZARDOUS MATERIALS

Question 1. RSPA estimates that 800,000 shipments of hazardous materials make their way through the national transportation system each day. The Hazardous Materials Transportation Act was last amended in 1994. The legislation which regulates the transportation of hazardous materials including packaging and shipping requirements, safety features and placement of rail tank cars, safety performance of truck drivers and training and education for local emergency responders, expired in FY 1997. There were no hearings during the 106th Congress on this issue. What plans do you have for moving this reauthorization forward? Are there specific areas of hazardous materials transportation that you believe need to be addressed?

Answer. I believe that the Administration and Congress should work together on reauthorizing and strengthening this law in order to improve the good safety record of hazardous materials transportation, and I am committed to doing so.

Question 2. Pursuant to Title 49 CFR Part 107, Subpart G (107.601–107.620), certain offerors and transporters of hazardous materials, including hazardous waste, are required to file an annual registration statement with the U.S. Department of Transportation and to pay a fee. The fee provides funds for grants distributed to States and Indian tribes for hazardous materials emergency response planning and training. DOT changed the fee assessment for haulers of hazardous transportation from a flat rate per carrier to \$1975 annually for large carriers and \$275 for small carriers. In December 2000, the RSPA announced a proposal to temporarily reduce registration fees since the registration fees collected were more than the amount anticipated when the fee schedule was established. However the Bush Administration's budget request required full funding for RSPA through user fees, so eliminating the proposal to reduce the user fees. Can you please comment on the issue of user fees?

Answer. It is Administration policy that industries that benefit from government programs pay for those programs. The Hazardous Materials Safety Program benefits shippers and transporters of hazardous materials by helping ensure the safety of hazardous materials in transportation. Consistent with Administration policy, the RSPA budget request proposes to charge the hazardous materials industry for the costs associated with assuring the safe transportation of hazardous materials. This would ensure that industry pays part of the cost of the program that facilitates its operations receiving those benefits.

Question 3. I have reviewed your credentials, which are impressive and clearly show a wealth of experience in the business sector and in managing people and budgets. However, given that you do not have the same depth of experience in the areas of pipeline and hazardous materials safety, what actions will you take to familiarize yourself with your new regulatory responsibilities? What qualifications will you look for as you fill out your staff?

Answer. RSPA is a very diverse agency. Based on my previous contacts and through my more recent direct experience with the RSPA senior staff, I know that RSPA is staffed with highly skilled and professional individuals. I am confident that, irrespective of my direct in-depth knowledge of these two programs, the management skills that I bring to the position will be relevant and that the combination of my skills and those that are available through the career staff will enable RSPA to flourish.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. SENATOR JOHN MCCAIN TO ELLEN G. ENGLEMAN

Question 1. As you may be aware, this Committee has worked at length to develop comprehensive pipeline safety improvement legislation. As a result of our bipartisan efforts, the Senate approved S.235, the Pipeline Safety Improvement Act of 2001, on February 8th. We remain hopeful the House will take a similar course of timely action. While the Senate has acted, we are certainly interested in working with the Administration and will consider its recommendations to further promote pipeline

safety. When can we expect to receive input from the Department on proposals to strengthen our pipeline safety policies?

Answer. I know the Department looks forward to working with the Congress to complete this important work this year, and have established it as a priority element in our National Energy Policy, reflected in the Administration's recent call for legislative action. Critical to these mutual efforts are statutory mandates for pipeline integrity management programs and programs that promote safety, including public education and training. Reauthorization must include funding levels sufficient to strengthen the Office of Pipeline Safety and its State pipeline safety partners.

Question 2. I recently contacted Chairman Young of the House Transportation and Infrastructure Committee to urge him to move forward with action on pipeline safety improvement legislation. If confirmed, what actions would you take to help move a pipeline safety bill through the legislative process?

Answer. If confirmed, I will commit myself to pipeline safety reauthorization and to provide recommendations or proposals to Congress in time for decisive action during this session.

Question 3. Last week, RSPA announced it would be seeking the largest civil penalty ever proposed against a gas transmission pipeline operator in the history of the federal pipeline safety program. Specifically, RSPA would be imposing a \$2.52 million civil penalty against El Paso Energy Pipeline Group for safety violations related to the August 2000 pipeline failure in Carlsbad, N.M., which led to the deaths of 12 people. Please comment on the Department's action in this manner. Can we expect RSPA to take similar punitive actions in the future?

Answer. I am aware of, and support, RSPA's decision to levy civil penalties in this tragic case. RSPA must remain committed to using all the incentives at its disposal—preventative education and training activities as well as penalties to ensure the safety and reliability of the Nation's pipeline network. RSPA must maintain its independence and will take strong action, whenever warranted, yet work with the pipeline industry and all other affected stakeholders to improve safety and reliability.

Question 4. In the past, the National Transportation Safety Board (NTSB) has indicated that RSPA has the worst record of all transportation agencies in responding to its recommendations. What will you do to improve RSPA's responsiveness to NTSB safety recommendations?

Answer. I am aware that RSPA has taken important steps over the past several years to improve its responsiveness to NTSB safety recommendations and that its recent record has, in fact, been much improved. RSPA and NTSB will not always agree on specific responses to each recommendation, but should consistently agree on safety as the highest priority. However, I assure the Committee that I will personally place the highest priority on prompt and complete replies to all NTSB recommendations. I also commit to early and frequent coordination with the Board leadership and members.

A recent example of RSPA placing a higher priority on working with the NTSB involves RSPA working directly with the Department's newly created Intermodal Hazardous Materials Program Office. A safety recommendation had been issued to another Operating Administration that directly involved RSPA, and by working jointly with the two offices, the recommendation was immediately acted upon and addressed. The end result was that the recommendation was effectively and efficiently responded to, which improved transportation safety.

Question 5. If confirmed, what policies would you initiate to promote the safe and efficient transportation of hazardous materials?

Answer. I will encourage regulations that enhance intermodalism and international harmonization to promote the efficient movement of hazardous materials across borders while maximizing safety to the public. I will stress compliance assistance, including training and outreach to educate the regulated industries (e.g., carriers, shippers) on the regulations, and enforcement to address violations of hazmat regulations. I will encourage more extensive use of data analysis to identify threats to safety not yet addressed in our program. I will foster an environment that strives to enhance customer service.

Question 6. In 1990, Congress authorized an emergency preparedness grant program (EPGP) for states and Indian tribes to be funded from fees collected annually from the hazardous materials industry through a registration program. At the same time, Congress directed the Department to adjust the amount of the fees being collected to reflect any unexpended balance in the EPGP.

This current registration year—2000–2001—is the first time the Department has collected an unexpended balance in the EPGP. As required by law, the Department proposed in December 2000 to adjust the fees downward to reduce the unexpended

EPGP balance. However, the President's budget request proposes to use this unexpended balance—currently in excess of \$7 million—to partially fund the federal hazardous materials transportation regulatory program, and further, requires the Department to withdraw its proposal to reduce the hazmat registration fees so that the Department will continue to have access to an unexpended reserve of funds, and finally, that you would propose another rulemaking to raise the fees so that by FY 2003 there will be funds in the EPGP account to fully fund the federal hazardous materials transportation regulatory program and the EPGP—a total of at least \$36.5 million.

(a) Does the Department currently have authority to divert hazmat registration fees for the purpose of funding the Department's hazardous materials regulatory program? (b) Is the Department violating current law by refusing to adjust the unexpended balance in the EPGP? (c) Would you agree that the Department's hazardous materials transportation regulatory program is critical to ensuring the safe transportation of these materials? (d) Do you believe that a safety program should be dependent on whether or not sufficient fees have been collected to accomplish necessary inspections, enforcement, and regulatory efforts?

Answer. I understand that RSPA does not have authority to use hazmat registration fees to fund the hazardous materials safety program without statutory change. On April 9, 2001 the President submitted his fiscal year 2002 budget request to Congress. In that budget request, the President proposes to fund a portion of RSPA's hazardous materials safety program budget from fees collected through the Hazardous Materials Registration program. Consistent with the President's budget request to Congress, RSPA is delaying final action on this rulemaking pending enactment of the authority to provide the authorization to fund part of the hazardous materials program with registration fees. I am told the Department's legislative proposal on this subject is currently in clearance.

The delay in action to reduce registration fees would not appear to violate laws, especially because the President has not proposed changes to Congress to implement the use of these funds in a new way. The President's FY 2002 budget proposes the use of fees to partially cover the costs of the hazardous materials program. If the proposal is adopted, it will establish the legal basis for spending those funds to partially fund RSPA's hazardous materials safety program. Otherwise, I am told that RSPA intends to adjust fees significantly to reduce the surplus over a number of years.

I do agree that the hazardous materials safety program is critical to the safe transportation of hazardous materials. The program also yields substantial benefits to industry in providing a consistent set of national standards to efficiently transport hazardous materials throughout the U.S. We are confident that the industries that benefit from the program can provide sufficient funds to cover the program costs without imposing any net economic disadvantage. I am confident that Secretary Mineta would not allow any reduction in safety effort due to reduced user fee revenues.

Question 7. The United States benefits greatly from the international commerce of hazardous materials. We are told that no other country funds their hazardous materials regulatory program through user fees. Has the Department assessed the competitive disadvantages that US industry may face as a result of these fees?

Answer. I understand that the Department has not specifically analyzed competitive disadvantages that could result from the application of user fees. However, it is also my understanding that RSPA anticipates that an additional fee would have a negligible economic impact on companies engaged in foreign commerce.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS
TO JON ALLAN RUTTER

PASSENGER SERVICE

Question 1. Many experts believe that it is long past the time for the United States to develop an integrated high speed rail network, similar to those in Europe and Japan, in an effort to develop a more balanced transportation system, improve air quality and spur economic growth in our downtown business centers. Can you comment on your plans for the high speed corridor program?

Answer. Before answering about the plans for high-speed rail in the U.S., I want to address the international comparisons in the question. The Department of Transportation's Bureau of Transportation Statistics compiled an informative set of transportation statistics about the G-7 countries, available at <http://www.bts.gov/itt/G7HighlightsNov99/G-7book.pdf>. These statistics seem to illustrate that each na-

tion's transportation system usage statistics reflect its relative modal transportation infrastructure investments. Western European nations and Japan have more rail passenger travel (passenger-kilometers) than the United States, but the U.S. has significantly more travel by air. These statistics illustrate the national investment choices made in each of these countries. Our aviation system and extensive highway and road networks offer Americans much more personal mobility than other G-7 nations, as measured by passenger-kilometers per capita.

However, highway and aviation congestion has pressed many state transportation planners to advocate higher speed intercity passenger rail services that would offer competitive travel times to commercial aviation and automobiles. One of the tasks of the Department of Transportation will be to work with the Congress and the States to figure out the right kinds of incentives to bring about more of this type of development. Given my experiences in Texas, I have unique perspectives in working with other states in these high-speed corridors. I plan to give priority consideration to this effort in the context of the broader issue of the Federal role in the management and improvement of rail passenger service in this country.

Question 2. Some people advocate the "privatization" of Amtrak, but don't agree on what that means. We, in fact, have mandated that it become "operationally self-sufficient" by 2003, even though no other railroad in the world operates without federal support. Do you think that privatization means the elimination of operating support, and/or the elimination of capital support (which means the end of the system), or just that it should not be a federal entity operating it?

Answer. There is currently no legislative mandate for the privatization of Amtrak or, more generally, of rail passenger service in the U.S. I believe the sentiment for "privatization" is motivated by a desire that the provision of rail passenger service be less dependent on the public sector for financial support and that it be managed by an organization with strong incentives to offer good customer service and operate efficiently. It can be argued that, given the degree of public investment in other competing modes of intercity transportation, rail passenger service will require substantial and continuing public investment, and that Amtrak will also have great difficulty shedding its dependence on operating support. I welcome the suggestions by Members of Congress that there be a debate on ways to improve upon the provision of rail passenger service while decreasing the need for public and, specifically, Federal support.

Question 3. As you will hear, some people on this committee will say that a passenger railroad should be funded only in the most congested areas of the nation—the East and West coasts. Others feel very passionately that it must be a national system—that covers the whole country—otherwise they are unwilling to pay for it. What is your opinion? Do you ascribe to the theory that it is only for congestion relief in overcrowded urban areas where you just can't drive, or do you think it also necessary as an alternative in more rural areas, where people already have less choices—served by fewer airlines, etc?

Answer. Certainly the purely economic case for the provision of rail passenger service is stronger in those types of services that represent attractive travel alternatives to air and auto trips, where the revenue recovered exceeds or comes close to exceeding the operating cost, and where there are substantial public benefits such as congestion relief. These circumstances tend to be more likely in short distance "corridor" services. States also appear more likely to share in financial support for these types of services. Service to more isolated communities may be justified on other grounds. In any case the extent of rail passenger service should not be static. The provider of these services needs to continue to examine the route structure.

RAILROAD REHABILITATION AND IMPROVEMENT FINANCING ACT (RRIF)

Question 1. How is the FRA implementing the RRIF program? Have any awards been made?

Answer. I understand that FRA has designed an interactive application process that provides technical assistance to prospective applicants. Applications may be submitted at any time. Pre-application meetings are encouraged, but not required. If sufficient historic financial information is provided, FRA calculates a preliminary estimate of the Credit Risk Premium for a prospective applicant prior to completion of an application.

Since the Final Rule was effective on September 5, 2000, FRA has had 20 pre-application meetings. A total of 4 applications have been submitted. FRA has approved the first RRIF loan, for the I&M Rail Link. The \$100 million loan will be used to refinance existing debt as part of a re-capitalization plan that will enable the railroad to undertake a 5-year major track rehabilitation program. I&M Rail Link is a 1,400 mile regional railroad operating in the States of Iowa, Illinois, Min-

nesota, Missouri, and Wisconsin, serving 907 shippers. The term of the loan is 25 years.

FRA currently is evaluating the creditworthiness of the other 3 applications.

Question 2. This is a new program that requires financial expertise. Do you believe that the agency is adequately staffed to advise applicants, review applications and process and monitor awards?

Answer. The RRIF statutory provisions amended Title V of the Railroad Revitalization and Regulatory Reform Act of 1976. The staff assigned to the RRIF Program has experience managing the prior Title V Program. FRA also is strategically allocating available resources to the RRIF Program. Even so, if confirmed, I will work with our budget office (and the Secretary's Office and the OMB) to consider whether additional staff and contractor support would help expedite review and processing of RRIF applications.

HIGH SPEED CORRIDORS

Question 1. Amtrak recently introduced high-speed rail service between Boston and Washington D.C. The Department has designated nine other high-speed rail corridors. As Secretary, what will be your position on expanding high-speed rail service? And if supportive, what steps will you pursue?

Answer. If confirmed, I will have FRA continue to work with the State sponsors of corridor service and with Amtrak to encourage investment and service development in the designated high-speed corridors. Given my experiences in Texas, I believe the strong state leadership and commitment shown in many of these corridors will be one of the keys to the success of these efforts. I will also want FRA to be fully engaged with other parts of the Administration in developing the right mix of federal policies and programs that will lead to beneficial development.

SAFETY

Question 1. Administrator Molotoris established the Safety Assurance and Compliance Program (SACP) to address systemic safety concerns in the railroad industry. Do you believe that this program has been a success and do you plan on continuing to use it to address safety issues? Please explain what role it would play.

Answer. I believe this program has helped foster a cooperative, system-based safety approach to safety issues outside the typical realm of regulation, and I am told most rail management and rail labor officials believe the program has been successful. I agree with them, and look forward to discussing improvements to the program they believe will build upon these successes, should I be confirmed. SACP is one tool available to the FRA as it works to improve rail safety, another is enforcement focused on the issues that present the greatest risk to the public, railroad workers and rail operations. Future progress in increasing rail safety will depend on using all tools available, a sound and effective safety inspection and enforcement program, as well as programs that encourage meaningful safety partnerships.

Question 2. The last eight years have produced the lowest numbers of fatalities in railroad history. What do you attribute this decline to? How do you plan to further improve those numbers during your tenure?

Answer. This decline has been due to hard work by the FRA, rail management and rail labor in a concerted attempt to improve rail safety. There are a number of factors at work, not the least of which is the FRA's recent efforts to create cooperative approaches to rail safety, such as the Safety and Compliance Program and the Rail Safety Advisory Committee. The FRA also supports an ambitious research agenda, much of which is aimed at new technologies and practices to make railroads safer. Future actions will likely focus on addressing fatigue-related accidents, improving track inspection and maintenance practices and technologies, and testing and developing cost-effective collision avoidance technologies.

While no rail passenger fatalities were reported in 2000, and the 24 railroad workers killed on the job was the lowest number ever, FRA is working to reduce the number of citizens killed in highway-rail crossing crashes or killed while trespassing on railroad property. These incidents represent 95 percent of the rail-related deaths for last year, and pose the greatest challenge in meeting the agency's GPRA safety performance goals. In addition to working to assess the full range of education and outreach programs aimed at reducing these fatalities, I would also pursue a range of other initiatives, if confirmed: Encourage states to use TEA-21 safety incentive grants (Sections 1403 and 1404 of TEA-21) to augment grade crossing formula funding; Work with states and railroads to complete work on grade crossing protection projects in less time; Work with states and the Congress to improve the accuracy of the National Highway-Rail Grade Crossing inventory database; Encourage states to include rail-pedestrian accident prevention in their state traffic safety

plans; Work with community leaders to develop more effective public service campaigns and education programs to caution citizens about the dangers of walking along increasingly busy, multiple track rail corridors.

Question 3. There have been concerns in recent years that the accident reporting information is not accurate. How will you ensure that data the FRA receives is verifiable?

Answer. Timely and accurate accident reporting is critical to the FRA being able to achieve our GPRA goals by reducing accidents and injuries. I understand FRA extensively revised their accident/incident reporting regulations in 1997, and these rules require railroads to maintain accurate reporting on accidents, incidents, injuries, and occupational injuries. These rules also require a complaint procedure for employees who believe they have been intimidated or harassed for reporting an injury (these employees and their representatives can also communicate this information directly to the FRA). If confirmed, I will work with FRA staff as they continue to inspect and audit railroad records to ensure their accuracy.

Question 4. For many years now, rail labor and management have not agreed to the Department's proposals to reauthorize the federal railroad safety program. As Administrator, what will you do to forge the consensus that would accelerate the enactment of some improvements to current law?

Answer. The authorization of appropriations for the Federal rail safety program expired at the end of fiscal year 1998. Since then, the program has functioned on the basis of annual appropriations and the use of the significant rail safety regulatory powers that Congress has already conferred on the Secretary of Transportation. The U.S. Department of Transportation is hopeful that the program will be reauthorized and is working to develop a reauthorization proposal. A draft bill is currently in review in the executive branch. If confirmed, I will make every effort to bring the parties together to reach a consensus on rail safety reauthorization.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
JON ALLAN RUTTER

AMTRAK

Question 1a. Since enactment of the Amtrak Reform and Accountability Act of 1997, Amtrak has received nearly \$4.5 billion in federal assistance, yet its debt load has more than tripled over that same period from about \$1 billion to \$3.3 billion. Further, Amtrak's own data shows that almost all of its 41 routes operate at a loss, with about 25 percent of those routes losing over \$100 per passenger. One route lost as much as \$512 per passenger. What are your views on Amtrak's current route structure?

Answer. Amtrak's current route structure is significantly similar to the network created thirty years ago at Amtrak's inception. However, without knowing more about the interrelationships among routes and how they relate to the system's overall financial performance, I cannot yet estimate the direct and indirect effects of changes to specific routes or services. If confirmed, I would work to see that a more sophisticated understanding of these complicated issues would be used in developing a national passenger rail policy.

Question 1b. What is your understanding of how Amtrak chooses routes and what role, if any, should the FRA play in route selection?

Answer. My understanding is that Amtrak has used a number of methods, some less analytical than others, to determine which routes it will serve. Amtrak's latest "market-based network analysis" methodology is not well known outside the company. But, for me, the question of how routes are chosen, expanded or terminated should be determined in large part by principles laid out in a national passenger rail policy. In a recent speech before the National Press Club, Amtrak President George Warrington talked about "mission conflict" saying that it was unrealistic to expect Amtrak to meet a mandate to run a national network and also to perform in a true commercial sense. He called on Congress and the Administration to define the mission of intercity passenger rail in this country and to align capital resources with that mission. He stated that he believed the major questions for such a rail policy should be (and I paraphrase): (1) What would a national passenger rail system look like? (2) Should a national system have routes that don't pay for themselves? (3) How much capital will be provided to support this system, and where will it come from?

I agree that these questions begin the discussion of a national passenger rail policy, although such a policy should address more fundamental issues than routes. If confirmed, I would work with Secretary Mineta, the Administration and interested

members of Congress to develop a policy that answers these three questions and much more. Once that policy is developed, I would foresee that FRA would not choose routes, but rather ensure that the passenger rail network is consistent with the policy.

Question 2a. As you are likely aware, last week Amtrak executed a transaction to mortgage a portion of New York's Penn Station in order to secure a loan for \$300 million. Apparently, Amtrak's financial condition is so severe that without an emergency infusion of cash provided by this deal, it would face immediate bankruptcy. More troubling, I have recently learned this deal is one in series of transactions over the last several years in which Amtrak has mortgaged billions of dollars in assets to which the federal government holds a lien. In each case, the federal government had to subordinate its lien to enable the deal to go forward. It is my understanding that the Federal Railroad Administration (FRA) was primarily responsible for overseeing the federal government's interest in these deals. Can you explain how you view the FRA's responsibility in such oversight matters?

Answer. It is my understanding that the Secretary has delegated to the Federal Railroad Administrator the responsibility for actions associated with the mortgage and liens on Amtrak assets held by the Department. Before acting, FRA assures that any proposed transaction is consistent with the Secretary's views on the management of Amtrak's assets, with the interests of American taxpayers and passenger rail customers in mind.

Question 2b. If confirmed, what will you do to insure that the American taxpayer's interest are fully protected? Please provide for the Record a list of all financial transactions in which the Department of Transportation has acted to subordinate its rights in regard to Amtrak financial transactions.

Answer. To the best of my ability, I will carefully review Amtrak transactions, particularly looking at whether such transactions constrain future decisions of either the executive or legislative branches about Amtrak. A list of such transactions is attached.

Question 2c. What will you do to increase the FRA's awareness of Amtrak's current financial and operational situation and how will you insure that future actions by Amtrak do not result in unanticipated transportation disruptions?

Answer. If confirmed, I would assist Secretary Mineta as he performs his fiduciary duties as a member of Amtrak's Board of Directors. Passenger rail policy development will depend on an understanding of Amtrak's current financial status, and we will be working with Secretary's office to develop that information. I would also expect that FRA staff will carefully monitor Amtrak's finances and trends, so that the Secretary can anticipate the likely service implications of Amtrak actions and act accordingly as a Board member.

Question 3. What is your understanding on whether Amtrak will meet the statutory requirement that it operate free of federal assistance by 2003?

Answer. I concur with Secretary Mineta's assessment and that of the DOT Inspector General, who have opined that Amtrak is unlikely to meet those deadlines specified in the 1997 legislation. Amtrak's need to conclude the Pennsylvania Station mortgage raises serious concerns about the company's ability to meet its operating and capital needs. Passenger rail service is a vital link in the American transportation network, and this most recent fiscal crisis highlights the need to identify structural reforms and develop solutions that improve its long-term financial health. Formal consideration of what that rail transportation network should be, what we can afford, the reforms that may be necessary, and how they will be implemented should take place soon, well in advance of the expiration of the current Amtrak authorization.

Question 4. Given your previous employment as an advocate for High Speed Rail, what actions do you intend to initiate in this area? Can we expect you to be a strong advocate of federal involvement in High Speed Rail development?

Answer. My prior experience in Texas involved implementing the Texas Legislature's vision for a privately funded, constructed and maintained high-speed rail system. If confirmed, I look forward to leading FRA as it provides assistance to states that are planning higher speed passenger rail service as part of their overall state transportation planning mandated by TEA-21. My own involvement in high-speed rail in Texas has given me first-hand knowledge of the practical difficulties of implementing high-speed rail, and I would be able to share those lessons with interested states.

Question 5a. Amtrak and some of its supporters in Congress have crafted a plan to provide Amtrak with \$12 billion in bonding authority that would be supported through a federal income tax credit for the holders of the Amtrak-issued bonds. In light of Amtrak's financial situation as I mentioned above, the Congress will be very interested in the Administration's position concerning this proposal. Have you had

an opportunity to review the Amtrak bonding proposal, S. 250, and if so, what are your views on the proposed legislation?

Answer. The Administration has not developed a position on currently proposed legislation to provide federal financial assistance for high-speed rail development, so I will defer any comments on this legislation or on the appropriate role the federal government should play in high-speed rail development.

Question 5b. In light of the recent disclosure of Amtrak's financial problems, would you support the proposed bonding plan?

Answer. I see the question of capital financing tools as another implementation issue that first depends on the development and articulation of a national passenger rail policy. Once that policy is developed, then alternatives can be examined for public financing of capital expenses of passenger rail.

Question 5c. Based on your past experience as an advocate for high-speed rail, can you tell us what improvements the American taxpayer could expect to see if the proposed bonding plan were to become law? How many miles of high speed rail can be built for \$12 billion dollars?

Answer. I am not familiar with the precise details of S. 250, and do not know how or where the funds raised through these bonds would be expended. I know that states and regions are planning different types of passenger rail service operating at different speeds, and that these differences will affect the answers to your question. The answer on miles per dollar depends upon, among other things, the trains chosen and the speeds desired and permitted over a chosen infrastructure.

Question 5d. I am concerned that there has been little study or reporting on the true cost of implementing high speed rail on a national basis. Can we expect the Administration to conduct a cost assessment on high speed rail?

Answer. In 1997, FRA produced a report to Congress assessing the commercial feasibility of high-speed ground transportation. A copy of the report is available at <http://www.fra.dot.gov/doc/hsgt/cfs/index.htm>.

Question 6. In 2000, there were 928 deaths attributable to rail operations, of which approximately 50 percent were trespasser-related and more than 40 percent occurred at highway rail grade crossings. What actions will you initiate to help reduce rail fatalities?

Answer. If confirmed, I will work with the FRA staff to assess the full range of safety education and outreach programs. I would also like to explore the feasibility of other initiatives, such as: Encourage states to use TEA-21 safety incentive grants (Sections 1403 and 1404 of TEA-21) to augment grade crossing formula funding; Work with states and railroads to complete work on grade crossing protection projects in less time. Work with states and the Congress to improve the accuracy of the National Highway-Rail Grade Crossing inventory database; Encourage states to include rail-pedestrian accident prevention in their state traffic safety plans; Work with community leaders to develop more effective public service campaigns and education programs to caution citizens about the dangers of walking along increasingly busy, multiple track rail corridors.

FREIGHT RAILROADS

Question 1a. In recent testimony before this Committee, the Chairman of two of our nation's largest freight railroads stated that in some cases, recent mergers have led to increased competition that has resulted in smaller profit margins. In follow up discussions with Committee staff, representatives of one of the railroads stated that as a result of the smaller profit margins, they will have to seriously cut back on capital investment and possibly cut shorter small volume routes in order to maximize earnings. One possible alternative suggested to avert service disruptions was to provide increased federal funding for public-private partnerships to support and build railroad infrastructure. What are your views on such partnerships?

Answer. There are a number of examples of such partnerships providing public benefits as well as expanding freight rail capacity: Oregon-Washington passenger rail service was improved by public investment in stations, grade crossing improvements and private expansion of freight rail lines. This resulted in higher frequency, higher speed passenger rail service, and more reliable, higher-speed freight service; The Alameda Rail Corridor is an example of providing safety and environmental benefits for the public and speeding freight operations for the railroads; The Alliance development in Fort Worth, Texas combines public investment in a cargo airport and ground transportation infrastructure with private investments in rail intermodal facilities to attract hundreds of businesses and thousands of jobs based on these transportation facilities.

Question 1b. Do you support public financing of railroad infrastructure?

Answer. Most of the railroads considering partnerships with public investment seem to be aiming at including rail investment provisions in the successor legislation to TEA-21. If confirmed, I would work with the Secretary and the Administration to consider these kinds of multi-modal transportation investments with public benefits as surface transportation reauthorization legislation is developed within the Department.

Question 1c. Should railroads be allowed limited immunity to discuss rates in order to set them at a level sufficient to cover their cost of capital?

Answer. I am concerned about the ability of freight railroads to attract sufficient capital. This affects the ability of railroads to provide better service to customers, to expand their infrastructure to move customers' freight, to make necessary maintenance investments to operate safely, and to provide good paying jobs to hundreds of thousands of Americans who either work for the railroads or work for companies that depend on the railroads. However, collective ratemaking may not be the most effective means of addressing the capital shortfall issue, particularly in a marketplace concerned with carrier competition.

SURFACE TRANSPORTATION BOARD

Question 1. What are your views regarding the role of the Surface Transportation Board and what type of relationship do you hope to establish between the FRA and the Board?

Answer. The FRA and STB have duties assigned to them by Congress by law. If confirmed, I would work closely with STB members to understand their views on the railroad industry (to the extent possible under ex parte rules) and to advise on safety implications of STB decisions.

Question 2. What are your views on the STB's new railroad merger rules?

Answer. I have not had time to thoroughly examine the full decision, but am encouraged about the following aspects of the rules: Requirement for integrated safety plans for post-merger operations; More detailed planning for post-merger service, so that past merger service problems do not occur; Consideration of future effects of a particular merger.

Question 3. What is your general philosophy concerning the proper role for the FRA in regard to addressing concerns raised by captive rail shippers?

Answer. Many captive rail shipper issues deal with economic regulations of the Surface Transportation Board, and statutory remedies granted to the STB by Congress. The FRA is the principal advisor to the Secretary on issues related to railroad economics, including rates, service and infrastructure capacity and condition. The proper role for FRA regarding the concerns of captive shippers is to develop recommendations to the Secretary for DOT's position in relevant STB proceedings and on proposed changes in law.

ATTACHMENT

AMTRAK TRANSACTIONS REQUIRING FRA SUBORDINATION/RELEASE

Amtrak has undertaken a number of actions requiring FRA to subordinate or release the Department's rights under the Amtrak lien. These actions can be viewed as falling into three general categories:

- Actions to permit Amtrak to mortgage existing Amtrak assets to raise cash for *operating needs*.
- Actions to permit Amtrak to mortgage existing Amtrak assets to raise cash to make *capital improvements* to these or other assets and, hence, increase the assets' ability to meet Amtrak's service needs.
- Actions to permit Amtrak to *acquire new equipment*. These represent the large majority of transactions involving subordinations/releases by FRA and are necessitated by the "after acquired" clause in the lien. That clause extends the lien to any equipment acquired by Amtrak. The equipment proposed for acquisition had never been encumbered by the Department's lien and potential lenders required as a condition of the financing that they have the first lien on the equipment. But for FRA's subordination/release of the lien on this new equipment, Amtrak would never have had access to it—indeed it would never have been built in the first place.

Transactions	Date	Dollar value [In millions of dollars]
Transactions that permitted Amtrak to raise cash from existing assets for operating needs:		
Certain rights at Penn Station, NYC	June 2001	\$300,000,000
Transactions that permitted Amtrak to raise cash from existing assets for capital investment:		
30th Street Station Philadelphia	December 1987	30,000,000
624 Superliner 1 and Amfleet 1 (four transactions)*	Dec. 99–Aug. 00	928,000,000
10 AEM–7 electric locomotives (two transactions)	Oct. 00–Apr. 01	40,000,000
Subordination/Release to permit acquisition of new assets:		
7 AEM–7 locomotives	December 1988	25,777,800
103 Horizon passenger cars	September 1989	108,150,462
70 Thrall material handling cars	June 1990	22,197,000
9 F40 locomotives	June 1990	16,200,000
18 GE Dash 8 locomotives	June 1990	31,872,604
Emeryville, CA lease	August 1993	1,248,000
43 GE 8–40 locomotives (4 transactions)	Sept 93–Dec. 93	111,800,000
Chicago Union Station garage	December 1993	20,000,000
83 Superliners passenger cars (12 transactions)	Mar 94–Dec. 94	159,790,709
10 GE dual mode locomotives	December 1995	34,159,605
98 GE P42 locomotives (6 transactions)	Sept 96–Jun 97	254,800,000
8 GE dual mode locomotives	March 1997	32,000,000
22 GE P42 locomotives (2 transactions)	Jun 97–Oct 97	57,200,000
50 remanufactured Greenbrier MHCs	November 1997	3,802,700
200 materials handling cars	November 1997	16,681,400
National Operations Center	November 1997	6,833,000
50 Viewliners low level sleeping cars	December 1997	96,534,529
Accla high-speed trainset maintenance facilities	December 1997	120,000,000
21 EMD (GM) F59 locomotives (2 transactions)	Aug 98–Nov 98	47,210,034
8 Alstom Surfliner trainsets (3 transactions)	Sep 00–Mar 01	106,000,000
Bombardier/Alstom Accla equipment (11 transactions) 10 trainsets, 11 high horsepower locomotives.	Nov 00–May 01	400,064,800
30 GE P42 locomotives (2 transactions)	Dec 00–Mar 01	78,000,000

* Frequently, large orders of equipment are divided into several transactions. This is because the financing commitment, and hence the need for FRA's subordination/release, occurs when equipment is accepted by Amtrak.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ERNEST F. HOLLINGS TO KIRK K. VAN TINE

RULEMAKING

Question 1. According to the DOT Inspector General, it takes on average 3.8 years to complete aviation rulemakings. How will you seek to expedite key safety regulations?

Answer. First, if confirmed, I will make the timely completion of key safety regulations one of my highest priorities, and will communicate that priority to the senior officials of the operating administrations. Second, I will personally review the status of rulemakings that are significantly behind schedule and make every effort to ensure their completion in a timely manner. In addition, it is my understanding that the Department has already taken a number of steps to help expedite rulemakings. For example, language has been added to the Department's Strategic Plan and the FY 2001 Performance Plan to stress the need to complete rulemaking actions in a timely manner. The heads of rulemaking agencies or offices will be expected to make rulemaking a priority and establish schedules for each important step for their significant rulemakings. All of the significant rulemakings will be tracked as part of a Department-wide tracking system that the General Counsel's Office is developing. The tracking system should help to identify unreasonable delays in specific rulemakings as well as general problems in the process, so that remedial steps can be taken. The General Counsel's Office has also developed a training course on the rulemaking process, which will stress the importance of completing the process in a timely manner, and attendance by new political appointees has been required. Finally, the Department will continue to explore new and innovative ways to improve its rulemaking process. The Department's internet-accessible rulemaking docket is but one example of its efforts in this regard.

Question 2. The coordination process for rulemakings requires each of the modal administrations to draft rules, submit them to the General Counsel's office for co-

ordination and solicitation of views of other offices and modes. All too often other offices and modes do not place a priority on the process, despite the efforts of the General Counsel's Office. What changes do you believe are needed to ensure that other offices place a high priority on critical rulemakings?

Answer. The personal attention of the General Counsel and, where necessary, of the Deputy Secretary, combined with the tracking system described in the answer to the prior question will help ensure that other offices and modes give the proper priority to the clearance of critical rulemakings.

Question 3. The Office of Management and Budget also reviews DOT rulemakings. OMB does not have statutory time constraints on its review. Would such limits aid in having critical rulemakings issued? Should critical safety rules be exempted from OMB review? Can you detail the types of changes the OMB has sought in rulemakings and determine if they have made substantive changes to the various significant FAA safety rules?

Answer. If confirmed, I believe it will be important for me to continue the critical role of the General Counsel in dealing with OMB. I believe that responsible senior officials should be able to ensure that the deadlines established in Executive Order 12866 are met. I do not believe that statutory time constraints are necessary.

Exemptions are not necessary for critical safety rules. E.O. 12866 already provides exceptions for emergency situations or legal time constraints. OMB returns rules with which it has concerns for further consideration by the agency. Generally those concerns involve such things as the assumptions made or the methodologies used in economic analyses. OMB also will often question why other alternatives were not considered appropriate.

Question 4a. Under the Wendell H. Ford Aviation Investment and Reform Act, Congress mandated that the FAA establish an Aircraft Repair and Maintenance Advisory Panel. Can you tell us the status of this panel? Should the time for the panel's work be extended past the December 31, 2001 deadline? Have they begun to meet the challenges mandated in Section 734 delineating their responsibilities?

Answer. The FAA Aircraft Repair and Maintenance Advisory Committee has been established and is meeting monthly through the end of the year. However, due to the length of time required to establish the committee under the Federal Advisory Committee Act, the first meeting did not occur until June 12, 2001.

The Committee has determined that its work centers on determining the amount and type of work performed by aircraft repair facilities, then providing recommendations to the Secretary in four areas: "work performed," "staffing needs," "balance of trade issues," and "safety issues."

The general sense of the Committee is that it will be impossible to complete all its work properly by December 31, 2001.

Question 4b. The FAA drafted, and had approved by DOT and OMB, a rule concerning foreign Repair Stations. The rule, however, was never issued. Can you tell us when the entire rule will be published? Can you also provide for the Committee the views of OMB on the rule to illuminate why the rule has not yet been issued?

Answer. The FAA rulemaking action on repair stations had been submitted to OMB and objections had been raised by other agencies before the change in Administrations. It was still pending at OMB at the time of the change. In accordance with directives issued by the new Administration applying to all pending rulemakings, this rule was withdrawn from OMB and re-reviewed within the Department to determine whether changes were appropriate. The rule was re-submitted to OMB on July 2. I understand that DOT does not yet know OMB's views.

Question 5. The FAA and DOT recently issued a request for comments on congestion pricing options for LaGuardia's airport. While the notice specifically acknowledges that "grant-funded airports be available for public use on fair and reasonable terms and without unjust discrimination could continue to make it difficult for airports to design workable market-based pricing regimes" and also notes that Federal laws "may restrict" pricing options, nowhere does the document categorically state that airports are preempted from interfering with routes, rates and service under the Airline Deregulation Act, and that efforts to use price to affect such items would be specifically preempted. What role will you play in reviewing the comments and views on this matter? While existing law is clear, will the General Counsel state that airports are preempted from deploying such pricing schemes?

Answer. If confirmed as General Counsel, I will work closely with the FAA on identifying those options that represent the best public policy solutions for controlling congestion at LaGuardia. We will then address whether they may be implemented in accordance with existing legal and international requirements or whether changes might be advisable.

While Federal law is clear that a State or airport owner may not enact or enforce laws related to air carrier rates, routes, or services, this prohibition does not limit

a State or an airport from carrying out its proprietary powers and rights. 49 U.S.C. 47173(b)(1) and (3). An airport operator, therefore, may impose fees, terms and conditions on air carriers that are reasonable, nonarbitrary, nondiscriminatory, intended to advance a local interest, and that do not impose an undue burden on interstate commerce. 49 U.S.C. 47173(b). It is possible that a properly structured peak pricing program whose objective is to align the number of aircraft operations with airport capacity could be reasonable and not unjustly discriminatory under 49 U.S.C. 47107(a)(1) and 47129 as well as under the U.S. international air services obligations and the International Civil Aviation Organization's policies.

However, the Department has the legal authority and obligation to review and carefully consider such programs, and I would ensure that the Department exercises that authority with respect to any plan. As stated in its June 12 Federal Register notice on LaGuardia options,

[T]he FAA does not propose nor endorse the Port Authority's options at this time. Federal laws, regulations, and U.S. international obligations presently in place may, in fact, prevent PANYNJ from imposing these proposals. In this notice we seek suggestions on effective, comprehensive solutions that represent the best public policy for controlling congestion and allocating operating rights at LGA, and we will consider pertinent legal issues in any policy options ultimately put forward for adoption. 66 FR 31736.

I will ensure that, if confirmed as General Counsel, the Department's actions on this matter are based on sound legal analysis.

Question 6. Recently Secretary Mineta indicated that the Performance Based Organization work should be stopped until a Chief Operating Officer is selected. Disputes over what offices should be included in the PBO continue. The ATC system is at its basic function a safety responsibility of the Federal government, as former President Clinton indicated in forming the PBO, specifically recognizing the inherently governmental nature of the ATC system. Can you tell us the status of the hiring of the COO?

Answer. It is possible that there may be some confusion about the Performance Based Organization (PBO) due to media reports. It is my understanding the FAA's work on establishing the air traffic PBO is ongoing and has not been delayed because of the search to fill the position of the Chief Operating Officer (COO). With respect to that selection effort, I am told the FAA has contracted with an executive recruiting firm to conduct the search for the COO. Internal and external sources are being canvassed to identify potential candidates for the position. Several potential candidates have already been identified and they are being approached to determine their interest in the position. The Administrator will conduct interviews and Secretary Mineta will be involved in approving the final selection of the COO.

Question 7a. Many members of this Committee have called for action on a number of Department of Transportation regulatory initiatives. Unfortunately, many new or revised rules have never been acted and have dragged on too long. Below are questions on a few of those regulatory issues. When can we expect completion of a final rule requiring the safety certification of small airports?

Answer. The agency expects to issue the final rule not later than November 3, 2001. Issuance by that date will ensure that the FAA complies with requirements of the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century. Among other things, the Act requires issuance of the rule within one year of the close of comment period on the Notice of Proposed Rulemaking.

Question 7b. What is the status of requiring the deployment of collision avoidance technology on all-cargo aircraft?

Answer. The document is currently in executive level coordination and should be issued sometime this summer.

Question 8. The safety of Mexico-domiciled cross-border truck and bus operators is a growing concern in this Congress. Please explain how the Department intends to address the myriad unresolved safety issues associated with opening our border to Mexican carriers. This is especially important to the Committee in light of recent criticism directed at Federal Motor Carrier Safety Administration proposals.

Also regarding cross-border transportation, is there a Memorandum of Understanding between the DOT and the Department of Labor to ensure that all Mexico-domiciled truck and bus carriers also comply with all U.S. federal labor requirements?

Please provide the Committee with a list of all the DOT and DOL regulations that must be complied with by Mexico domiciled truck and bus carriers. Also provide the Committee with a status report on regulatory harmonization talks between the United States and Mexico. Specifically, include the status of those discussions concerning commercial drivers licenses, hours of service, computerized tracking of driv-

er records, environmental regulations, vehicle inspections, driver training, drug and alcohol testing and insurance.

Answer. I understand that the Department is developing a comprehensive plan to ensure that the NAFTA cross-border provisions are implemented effectively and on time without compromising highway safety. To guide the development and implementation of the plan, the Federal Motor Carrier Safety Administration (FMCSA) has established several teams to identify and implement the various near- and long-term program activities necessary to fully integrate Mexican operations into our operating, safety, and enforcement programs. The activities encompassed within the plan include very specific screening and monitoring procedures to ensure safe carrier, vehicle and driver operations in the U.S. The Department's plan continues to be refined as it analyzes comments on rules that have been proposed and circulated for public comment. I believe the Department recognizes that this is a matter of great concern to Congress, and it intends to work in the weeks and months ahead to assure that implementation can take place while fully addressing any existing safety concerns.

Mexican trucks and drivers operating in the United States must comply with the full range of Federal and State safety and operating requirements applicable to U.S. carriers. These include requirements concerning driver qualifications; vehicle inspection, maintenance and repair; driver hours of service; drug and alcohol testing; and insurance. Mexican carriers operating in the U.S. must maintain insurance on file with the FMCSA. The companies providing insurance must be licensed or admitted to issue bonds or underlying insurance policies in a U.S. State.

The North America Free Trade Agreement (NAFTA) assures a high level of safety in land transportation by encouraging the upward harmonization of the safety standards in effect in all three countries. Harmonization of motor carrier safety standards between the United States and Canada and the United States and Mexico is an ongoing process that pre-dates the NAFTA. The United States and Canada have worked through the U.S.-Canada Motor Carrier Consultative Mechanism, established in 1982. The United States and Mexico have cooperated through the U.S.-Mexico Transportation Working Group, established in 1989. A major accomplishment of these efforts is the establishment of a memorandum of understanding (MOU) between the United States and Mexico on the mutual recognition of commercial driver's licenses. The MOU ensures that drivers of trucks and buses from both countries have comparable safety and operating knowledge and skills and do not have more than one license. The United States has a similar reciprocity agreement with Canada.

The U.S.-Mexico Transportation Working Group, with Canadian participation already occurring on as-needed bases, evolved into the Land Transportation Standards Subcommittee (LTSS) established in the NAFTA to attempt to make the safety regulations of all three countries as compatible as possible. The NAFTA established working groups to address vehicle and driver standards, vehicle weights and dimensions, traffic control devices, rail safety, and transportation of hazardous materials. To address issues not specifically assigned to the LTSS by NAFTA, the three NAFTA parties have created a related group, the Transportation Consultative Group (TCG). This group (comprised of five separate working groups) has been working in cooperation with the LTSS to address issues related to cross-border facilitation, rail operations, electronic data exchange, application and exchange of information on advanced technologies and maritime and port policies.

The majority of the discussions related to commercial motor vehicle safety regulations and programs fall under LTSS #1, Commercial Motor Vehicle and Driver Standards and Motor Carrier Compliance, and TCG #3, Automated Data Exchange. As part of the work accomplished under LTSS #1, the three countries reached agreement in the following areas critical to our mutual efforts to ensure cross border safety:

1. *Vehicle and driver safety.* To adopt the out-of-service criteria promulgated by the Commercial Vehicle Safety Alliance as the minimum level of mechanical fitness to be sustained by all commercial vehicles engaged in interstate or foreign commerce.
2. *Age.* To establish 21 years of age as the threshold requirement to operate a commercial motor vehicle in international commerce among the NAFTA countries.
3. *Language.* In recognition of three countries language differences it is the responsibility of the driver and the motor carrier to be able to communicate in the country in which the driver/carrier is operating so that safety is not compromised, and
4. *Information systems.* To develop and implement an electronic exchange of commercial driver information commencing initially with driver status, with the ultimate objective of including conviction information and driver records.

The harmonization efforts have resulted in major improvements to Mexico's commercial motor vehicle compliance and enforcement program. Mexico has trained inspectors and instructors in U.S. safety inspection techniques; developed electronic safety databases to help monitor the safety compliance of carriers and drivers and facilitate exchange of safety information between Mexico and the United States; and published regulations that establish safety, operating, and logbook requirements for carriers and drivers.

As a member of the Commercial Vehicle Safety Alliance (CVSA), Mexico has adopted inspection procedures similar to procedures that will be used to inspect Mexican vehicles while they are in the United States. Mexico will enforce them with respect to Mexican and U.S. motor carriers operating south of the border and help ensure that the majority of vehicles and drivers are in compliance with the safety standards even before they reach the border.

Mexico has developed a comprehensive safety information system to monitor the compliance of its commercial carriers, vehicles, and drivers. The FMCSA has provided technical assistance in the design, development and implementation of these systems, in part, to ensure that they are comparable to U.S. systems and U.S. enforcement personnel have access to license, registration, and safety performance information on carriers and drivers that operate or plan to operate in the U.S. These systems include a driver's license module containing a centralized database of all *Licencia Federal* holders that includes license class and status information, driver identification data, and medical examination information; a centralized registration database of carriers and vehicles that contains carrier and vehicle identification and Mexican operating authority information; and a centralized safety performance database that includes information on vehicle inspections, carrier compliance reviews, convictions, and accident reports. Currently, U.S. enforcement personnel have on-line access to the driver's license and carrier and vehicle registration databases. Access to the safety performance information should be available by August 2001.

I am told that there is no DOT-Labor Department (DOL) Memorandum of Understanding on NAFTA's implementation. Rather, DOL administers Federal labor laws that apply to foreign commercial vehicle operators and their helpers who work in U.S. territory. Important statutes that directly apply to these persons include the Fair Labor Standards Act 29 U.S.C. 201 *et seq.*, the Occupational Safety and Health Act of 1970 29 U.S.C. 651 *et seq.*, and the whistleblower provision of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105.

DOL applies the minimum wage (which currently requires wages of \$5.15 per hour) and child labor provisions of the Fair Labor Standards Act to foreign truck drivers and their helpers working in the United States for a substantial period of time. Wages for all hours worked must be paid free and clear of impermissible deductions or expenses for the costs of operating the truck or traveling on the road. The child labor provisions restrict persons under age 18 from working as drivers or helpers on trucks. The U.S. Department of Transportation (DOT) regulates hours of service and age requirements for commercial drivers.

The Occupational Safety and Health Act (OSHA) applies to the working conditions of foreign truck drivers when they are in the United States. In general, OSHA requirements apply only to smaller trucks, since DOT administers laws with respect to the safety of commercial motor vehicles (which include vehicles with a gross vehicle weight rating exceeding 10,001 pounds). OSHA's hazardous materials requirements apply to any vehicle designed to transport hazardous materials that require placarding under DOT regulations.

The whistleblower provision of the Surface Transportation Assistance Act (STAA) prohibits retaliatory discharge or other discrimination against drivers of commercial motor vehicles, and other employees whose work affects the safety of such vehicles, because they complain about unsafe vehicles, testify in proceedings related to safety violations, or refuse to drive in violation of safety regulations or when conditions create a reasonable apprehension of serious injury.

While there is no formal Memorandum of Understanding between DOT and DOL regarding Mexican carrier compliance with U.S. labor laws, I understand that the two departments are working cooperatively on this important issue. For example, in a Notice of Proposed Rulemaking published on May 3, 2001, DOT proposes to require Mexican motor carriers to certify on their applications that they will provide information requested by DOL within 72 hours of the request. The Department will continue to work with DOL, and consider the possibility of a formal arrangement if necessary.

Question 9. Rail safety reauthorization has been stalled in the last several years. Please update the Committee on the Department's work to address rail safety issues such as: harassment and intimidation against workers who report safety problems

and violations; improving accident and incident reporting systems; fatigue management; employee training and certification; and increased inspector staffing.

Answer. Based on limited exposure to the activities of the Department's Federal Railroad Administration (FRA), I can provide some information about the rail safety issues you raise. To prevent harassment and intimidation of employees for reporting safety hazards, FRA actively employs the partnership methodology of the Safety Assurance and Compliance Program (SACP) in an effort to foster a positive safety culture in the railroad environment. These efforts are intended to encourage the free flow of information within the railroad to ensure proper attention to safety problems.

I am told that, to improve accident and incident reporting systems, a working group of FRA's Railroad Safety Advisory Committee (RSAC) is preparing a draft of a proposed rule to conform FRA's accident reporting regulations (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration. The working group will also recommend appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports*. Furthermore, FRA routinely audits railroad accident and injury records, reports, and procedures. In some cases, the agency has cited a railroad for hundreds of thousands of dollars in penalties for failure to report accidents and injuries properly.

To deal with the fatigue of safety-sensitive employees, FRA is utilizing SACP to encourage cooperative efforts on specific railroads, exchanging information on best practices through the North American Rail Alertness Partnership, and funding related research and development projects. Still, the National Transportation Safety Board has estimated that fatigue may be a contributing factor in nearly one-third of all accidents caused by human factors. It may be that the rail industry's voluntary efforts to manage fatigue have not been fully successful.

To deal with employee training and certification issues, I understand that FRA is enforcing existing regulations, such as 49 CFR Part 240 on locomotive engineer certification, and FRA has incorporated additional training requirements not yet in effect in (i) the Passenger Train Emergency Preparedness rules issued in 1998, (ii) the Passenger Equipment Safety Standards published in 1999, and (iii) the revised power brake standards for freight and other non-passenger service that were published January 17, 2001. In addition, FRA regularly monitors railroads' training and testing on their operating rules. Also, the issue of training for safety-sensitive railroad workers is being debated in the RSAC. FRA is considering the merits of initiating a rulemaking in that area.

As for increased inspector staffing, I understand that the Department is seeking 12 additional rail safety inspector positions in its Fiscal Year 2002 budget. FRA must intensify railroad inspection efforts in order to reverse the trend of increasing train accident rates. The additional field inspector positions will primarily support FRA's track safety program, with a particular focus on rail lines that carry high passenger traffic. Furthermore, the General Accounting Office (GAO) has called on FRA to increase the number of site-specific railroad inspections. In a report entitled, *Rail Transportation: Federal Railroad Administration's New Approach to Railroad Safety* (GAO/RCED-97-142), GAO urged FRA to assign additional resources to railroad bridge integrity, standards for new railroad control and high-speed technology, and efforts to reduce levels of railroad employee workplace injuries. If FRA receives the additional inspector positions, FRA will have a greater ability to address the growing track safety problem and meet some of GAO's additional expectations.

Question 10. The future of Amtrak is obviously a major concern to this Committee. Not a single passenger rail system in the world can operate without some form of public financing. What are your thoughts on ensuring that we maintain a national passenger railroad that is adequately financed and able to keep up with growing capital needs? Also, what are your thoughts on the pending Amtrak bonding legislation?

Answer. I agree with Secretary Mineta's assessment and that of the DOT Inspector General, who has stated that Amtrak is unlikely to meet the deadlines for self-sufficiency specified in 1997 legislation. Amtrak's need to conclude the recent Pennsylvania Station mortgage raises serious concerns about the company's ability to meet its operating and capital needs. Passenger rail service is a vital link in the American transportation network, and the Pennsylvania Station mortgage incident highlights the need to identify structural reforms and develop solutions that improve its long-term financial health. Formal consideration of what that rail transportation network should be, what we can afford, the reforms that may be necessary, and how they will be implemented should take place soon, well in advance of the expiration of the current Amtrak authorization. As for the pending Amtrak bonding legislation (S.250), the Administration has not developed a position on currently proposed legislation to provide federal financial assistance for high-speed rail

development, so I must defer any comments on this legislation or on the appropriate role the federal government should play in high-speed rail development. My view is that the question of capital financing tools is just one more implementation issue that first depends on the development and articulation of a national passenger rail policy. Once that policy is developed, then alternatives can be examined for public financing of capital expenses of passenger rail.

Question 11. We continue to be concerned with the safety of commercial passenger vans carrying 15 or more passengers. A rulemaking is still pending before the Department as mandated by TEA-21. When will a Final Rule be completed and published?

Answer. I am told that the Department expects that a final rule will be issued in the Fall of 2001. A Notice of Proposed Rulemaking was published January 11, 2001, with comments due April 11. The Federal Motor Carrier Safety Administration received 25 comments to review.

Question 12. There is an ongoing effort by the DOT and the Department of Labor to ensure the safety of flight attendants. In fact, last year a Memorandum of Understanding was signed committing the two agencies to identify and apply, as appropriate, Labor Department (OSHA) requirements to the flight attendant workplace. The first phase of this joint effort was completed last December. Please update the Committee on when this initiative will be completed.

Answer. Current activity involves the FAA and the Department of Labor holding joint meetings. The Department of Labor's continuing input forms an important part of the process. Another step is the review of the final document by general counsel of both agencies. The report is due December 2001.

Question 13. Section 725 of AIR-21 required a study on cabin air quality to be initiated within 60 days of enactment (April 5, 2000). What is the status of this study?

Answer. The cabin air quality study was initiated within 60 days of the enactment of the AIR-21 legislation, as required by section 725. The study is nearing completion, with the final report due by September 25, 2001.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
KIRK K. VAN TINE

SURFACE

Question 1. As you know, the Administration has announced its intention to fulfill the cross-border traffic requirements of NAFTA and will open the Border by the end of the year. What is the Department doing to prepare for the anticipated opening of the border? Will the Administration submit a proposal to Congress to authorize additional funding for border-related activities or seek other related authority?

Answer. I am aware that the Federal Motor Carrier Safety Administration has prepared a comprehensive plan to ensure that the NAFTA cross-border provisions are implemented safely and on time. The plan sets forth specific screening and monitoring procedures to ensure that Mexican vehicles and drivers comply with Federal Motor Carrier Safety Regulations when they operate in the U.S. The Administration has sought a significant increase in resources for FY2002 activities to prepare for the safe entry of cross-border commercial traffic.

Some of the major program strategies, activities, and milestones planned or undertaken to prepare for the opening of the Southern border to commercial traffic follow:

1. *Rulemaking.* On May 3, 2001, DOT proposed regulations governing the application process for Mexican-domiciled carriers that wish to operate in the U.S. and the process by which DOT will review the safety records of carriers during the first 18 months of their U.S. operations. The new requirements will ensure that carriers understand and are able to comply with U.S. requirements. Final regulations will be published by November 2001.

2. *Resources.* To support comprehensive State and Federal safety enforcement activities at the Southern border, the Department requested \$88.2 million in additional funds in its FY 2002 budget. The request includes \$13.9 million to hire 85 additional Federal staff to perform safety inspections and conduct safety audits of Mexican carriers. The Department also requested \$54 million to provide the Federal share for the construction and improvement of State commercial vehicle inspection facilities. Currently 23 border crossings with truck traffic do not have permanent inspection facilities. In addition, the Department requested \$2.3 million for immediate construction of areas to park commercial vehicles placed out-of-service for safety violations. The Department is also proposing that an additional \$18 million be

made available to support the staffing of State facilities and increase State motor carrier border inspection activities. All Federal enforcement personnel will be hired and trained by December 2001.

3. *Education and Outreach.* The FMCSA, in concert with the border States, will be conducting a series of safety compliance seminars to educate Mexican carriers and drivers on compliance with Federal and State regulations. The seminars will include a detailed explanation of new application requirements. These seminars will supplement ongoing efforts to translate and distribute educational materials to Mexican carriers and drivers. The seminars will be conducted from August to November 2001.

4. *Application Processing Procedures.* Procedures are being developed to ensure that all applications are evaluated thoroughly, accurately, and consistently, and that only qualified carriers are approved to operate. Procedures will be developed by September 2001. An application-processing center will also be established by September 2001.

5. *Safety Audit Procedures.* To ensure Mexican carriers operate safely, the FMCSA rulemaking requires that an audit of each carrier's safety performance be conducted. Within 18 months of receiving authority, all Mexican carriers must submit to a safety audit by providing records to a Federal safety investigator and participating in a thorough review of their operating procedures. Procedures for conducting the review will be in place by August 2001.

6. *Safety Databases.* The FMCSA will focus on improving the safety information systems available to Federal and State enforcement officials in order to verify application information directly with Mexican transportation officials, automate the review of applications, provide real-time safety performance and other data to Federal and State inspectors and effectively monitor the safety performance of Mexican motor carriers operating in the United States. All inspectors will have access to available U.S. and Mexican driver licensing, carrier, and other safety databases by January 1, 2002.

7. *NAFTA Coordination.* The Department of Transportation will continue to work with Mexico to increase regulatory compatibility between our countries, establish cooperative agreements on the exchange of safety information, and provide technical assistance to build compatible compliance and enforcement programs in Mexico. The adoption and implementation of comparable programs in Mexico will provide greater assurance that vehicles entering the U.S. are already in compliance with safety standards.

Question 2. The astronomical costs of transportation projects should be a top concern to the Department. The cost overruns associated with the Boston Central Artery Tunnel Project have risen to over \$14 billion, and those costs will likely continue to rise before the project is completed. The Big Dig project must serve as an example for all of us on the critical importance of federal oversight of federally funded transportation projects.

In addition to the Big Dig, the DOT is overseeing 41 other megaprojects. What actions will you take to ensure greater federal oversight on all federally-funded transportation projects—from airports to shipyards to highway projects?

Answer. I believe it is critical that the Department be a careful steward of federal funds. Recipients of DOT funds and DOT internal managers must be held accountable for meeting cost and schedule goals. Since projects will not always proceed as planned, the Department should have early warning of problems with these large projects and should play an active role in developing solutions for those problems.

I understand that the Department created a Task Force to strengthen the oversight process and that several recommendations have been developed regarding improvements in the quality of the oversight process and selection of the managers who perform the oversight. If confirmed, I would expect to work with other members of Secretary Mineta's management team to ensure that DOT oversight is strengthened.

Several of the operating administrations within DOT have processes in place to oversee additional infrastructure projects that are not categorized as mega-projects. Strengthening the process for mega-projects will also serve as a model for strengthening the oversight of these smaller projects.

ADMINISTRATIVE

Question 3. Over the last several years, it has become apparent that it is difficult, at best, to get reports and regulations cleared for release by DOT. Reports to Congress are regularly late and regulations are often held up for months as they make their way through the various agencies within DOT. Apparently even DOT agencies that have no role in the development, oversight, or enforcement of regulations are

routinely required to review and sign off on regulations and reports before clearance. (a) What action would you take to improve interagency communication and cooperation within DOT and streamline the review process for regulations and reports? (b) What will you do to help ensure that reports to Congress are completed and submitted in a timely manner?

Answer. Secretary Mineta has committed the Department to moving as expeditiously as possible in rulemakings, consistent with its obligation to ensure that DOT agencies comply with all statutory requirements for rulemaking. As General Counsel, I would play a significant role in accomplishing this management objective. On the recommendation of the DOT Inspector General, the Department has instituted a new tracking system for regulations. That system became operational on May 1. It is capable of generating a basic set of needed reports, and the Department intends to expand its capabilities over the coming months.

Secretary Mineta's frustration with delinquent reports from the Department while serving as a Member of Congress clearly demonstrated to him the need for accurate, timely information as a key component for decision-making by Congress. Additionally, the Deputy Secretary has made timely regulatory action by the Department and its modes a very high priority, in line with recent recommendations of the Inspector General. The DOT Inspector General (IG) studied delay in DOT rulemaking (report issued July 20, 2000), and its recommendations form the basis for improved interagency communication and cooperation. The IG found areas where there were clear opportunities for improving efficiency and effectiveness and made several recommendations, all of which the Department has implemented or is implementing. If confirmed as General Counsel, I commit to make a sustained effort in this area one of my highest priorities.

It is my understanding that the various administrations within DOT are not routinely asked to review the rulemaking actions of other administrations within DOT unless the rule making could directly affect programs within their immediate jurisdiction. For example, FRA may be asked to review an FMCSA rulemaking on railroad crossings, and NHTSA may review an FAA rulemaking on child seats. In addition, it is my understanding that the Office of the Secretary now limits the review of proposed regulations and reports only to those offices within the Department that could be affected. In coordinating the regulatory process for all the modes, I would attempt to ensure that the process works efficiently, and that regulations are developed and cleared in a timely manner.

Question 4. I trust that you clearly understand the difference between statutory and report language. What steps will you take at the Department to ensure that the modal administrations treat report language as it is intended, an expression of Congressional interest, rather than having it be treated as a Congressional mandate?

Answer. I can assure you that I clearly understand the difference between statutory and report language, particularly when it comes to the naming of specific projects in report language. In such instances, only statutory language is law; report language is not law but simply an expression of Congressional interest. If confirmed, I will be sure that the Chief Counsel offices in the modal administrations understand this as well.

MARITIME

Question 5. The President has proposed as part of the Administration's FY 2002 budget to zero out funding for Title XI maritime loan guarantee program. Private maritime interests who support the program recently published a report which argues that the program has been a net revenue raiser for the federal government? I am concerned the findings in the report have not been subjected to any outside independent analysis. If confirmed, what will you do in order to insure that such reports, which clearly counter the Department's position, are responded to fully and in a timely manner?

Answer. If confirmed, I will attempt to ensure that, when the Department is requested to evaluate a private report, it will perform an objective, independent, and balanced evaluation, and that the Department's analysis will be completed in a timely manner. My understanding is that an evaluation of the report mentioned is underway at this time in the Office of the Assistant Secretary for Budget and Programs.

AVIATION

Question 6. The FAA recently published several options for managing excessive demand at LaGuardia airport. Two of the options were developed by the Port Authority of New York and New Jersey, which operates the airport. Those options in-

volved market-based solutions wherein the Port Authority would charge congestion fees or hold an auction for take off and landing "reservations." I believe that any attempt to manage demand at LaGuardia must be done under the authority of the federal government because local authorities are legal preempted from imposing such solutions. Do you agree that airports do not, under federal law, have authority to establish their own remedies, such as congestion fees, for managing demand for air services?

Answer. The extent of an airport proprietor's powers to set fees to manage demand for air services raises complex legal issues as well as difficult issues with regard to our international aviation obligations. The FAA has the statutory authority to regulate navigable airspace and to assure efficient air traffic management. 49 U.S.C. 40103. An airport proprietor has the right to impose fees, terms and conditions on operators at its airport that are reasonable, nonarbitrary, nondiscriminatory, intended to advance a local interest, and do not impose an undue burden on interstate commerce. 49 U.S.C. 41713(b). It is possible that a properly structured peak pricing program whose objective is to align the number of aircraft operations with airport capacity could be reasonable and not unjustly discriminatory under 49 U.S.C. 47107(a)(1) and 47129 as well as under the U.S. international air services obligations and the International Civil Aviation Organization's policies.

However, the Department has the legal authority and obligation to review and carefully consider such programs, and I would ensure that the Department exercises that authority with respect to any plan. As stated in its June 12 Federal Register notice on LaGuardia options,

[T]he FAA does not propose nor endorse the Port Authority's options at this time. Federal laws, regulations, and U.S. international obligations presently in place may, in fact, prevent PANYNJ from imposing these proposals. In this notice we seek suggestions on effective, comprehensive solutions that represent the best public policy for controlling congestion and allocating operating rights at LGA, and we will consider pertinent legal issues in any policy options ultimately put forward for adoption. 66 FR 31736.

I understand that, at present, FAA is working with the Port Authority in seeking solutions to the congestion at LaGuardia; the Port Authority has not acted to impose congestion pricing or other market-based options on its own. The FAA's current effort is to attempt to identify those options that represent the best public policy solutions for controlling congestion at LaGuardia, and then address whether they might be implemented in accordance with existing legal and international requirements or whether changes might be advisable. I would ensure that I am kept informed as this subject develops, and that the Department's actions are based on sound legal analysis.

Question 7a. As you may know, the bilateral air services agreement between the United States and United Kingdom, known as Bermuda 2, restricts competition and is heavily slanted in favor of British air carriers. The U.S. has tried unsuccessfully for many years to liberalize the relationship. In recent weeks, there has been some talk that negotiations may be back on track as American Airlines and British Airways may make another attempt to obtain antitrust immunity for its international alliance. What is your position with regard to the U.S./U.K. bilateral, and what will you do to ensure that the United States is not put at a disadvantage with respect to access at Heathrow?

Answer. I understand that replacing the restrictive U.S.-U.K. aviation agreement with an "Open-Skies" agreement is a U.S. aviation priority. DOT met informally with the British on June 26 and 27 to discuss a possible resumption of talks, and it was agreed that the parties would not fix dates at this point, but would be flexible and prepared to meet as and when circumstances develop further. Meanwhile, DOT continues to concentrate its efforts on partners that are ready for liberalization.

I recognize the importance to U.S. carriers of access to Heathrow. I also recognize that Heathrow is a highly congested airport and that it is critical for the slot allocation system to continue to be transparent and non-discriminatory. In a liberalized environment, the ability of U.S. carriers to establish a competitively effective presence at Heathrow will be a key consideration if British Airways seeks antitrust immunity.

Question 7b. What are the chances that the U.S. will be able to get a more liberalized agreement, or even "open skies," with regard to the British?

Answer. Although I do not at present have access to full information on this topic, it appears unclear whether the U.K. government is ready to engage in serious talks leading to open skies.

Question 7c. What is your position on changing the 25-percent limitation on foreign investment in U.S. airlines?

Answer. The current 25-percent limit on foreign voting interest in U.S. air carriers is of course a part of U.S. aviation law, so any possible change would entail close consultation between the Administration and interested members of Congress. I am aware that there is a divergence of opinion on this issue. Proponents cite the existing limit as an obstacle to further liberalizing U.S. carriers' access to foreign markets, while others raise concerns about possible impact on our defense posture and other adverse effects. If confirmed, I would form an opinion on this important question only after I have had an opportunity to make a thorough study of all the relevant issues, in consultation with governmental and private-sector stakeholders.

Question 7d. What are your views on cabotage, and do you believe U.S. air carriers would be at an advantage or disadvantage if the Congress changed the cabotage laws?

Answer. This is a fundamental issue for both domestic and foreign aviation policy, as well as for the transportation parties concerned. I am familiar with the divergence of views in this area. Globalization of the airline industry, the growing number of carrier alliances, and consolidation concerns, for different reasons, have all spurred calls to reevaluate constraints that limit the markets that airlines can enter.

Modifying or removing the cabotage prohibition could result in new sources of competition for U.S. aviation consumers and if adopted globally, contribute to a more open international aviation regime on a worldwide basis. However, there are also important competing factors, such as our defense posture, that argue against any change in the cabotage prohibition.

I believe that U.S. airlines have shown both domestically and internationally that they are effective, adaptable competitors. I would expect such U.S. carrier competition to continue if the cabotage laws were changed. However, the specifics of any "advantage or disadvantage" would also depend on how Congress changed the cabotage laws and the international Response to the change.

Question 8a. In its January 2001 report on airline competition, the Department of Transportation discussed taking aggressive action to open up airport facilities to make possible new and increased airlines services, and thereby promote competition. What actions to open airport facilities do you believe DOT could take in order to promote competition?

Answer. Beginning with Fiscal Year 2001, certain large- and medium-hub airports must submit competition plans in order for the FAA to approve the collection of a new Passenger Facility Charge (PFC) or for a grant to be issued under the Airport Improvement Program (AIP). The underlying purpose of this statutory requirement—contained in AIR 21 and based on our report "Airport Business Practices and their Impact on Airline Competition"—is for those airports that are dominated by one or two carriers to demonstrate how they will provide for new-entrant access and expansion of incumbent air carriers.

To date, DOT has reviewed and provided extensive comments on 38 competition plans, resulting in airport officials adopting business practices that are more "entry friendly." DOT has met with airports that have deficient plans to provide them with detailed comments as to what actions they need to take to meet their statutory obligations regarding the content of the competition plan. Finally, DOT developed an "implementation audit plan," required by AIR 21, in light of the possible need to take more stringent legal/regulatory actions against those airports not meeting their legal obligations.

Question 8b. In your view, is the perimeter rule at Reagan National Airport an anticompetitive barrier to competition?

Answer. While a principal tenet of airline deregulation is open competition and the elimination of economic restrictions such as the perimeter rule, the Department's position has been that modification to the perimeter rule at Reagan National Airport should be handled by Congress and the local authorities. I agree with that position.

Question 9a. For each of the past four years, DOT has extended the current Computer Reservation System (CRS) rules for a year without addressing the concerns that it raised about the rules' applicability to Internet sales and other issues. Do you believe the CRS rules should apply to Internet distribution of airline tickets?

Answer. Because the Department recognizes the importance of the question of whether the CRS rules should be applied to the Internet sale of airline tickets, the Department asked the parties in its pending CRS rulemaking to comment on this issue. I understand that many parties submitted comments on this issue which disagree on whether regulation is necessary. I have not yet had an opportunity to review those comments but would carefully do so before I would advise the Secretary on the rulemaking issues.

Question 9b. When will DOT act to finalize changes to the CRS rules?

Answer. The Secretary fully recognizes the importance of completing the CRS rulemaking. He has instructed the staff to move forward on the rulemaking and develop a rulemaking proposal that can be forwarded to OMB. If confirmed, I intend to ensure that the staff promptly carries out the Secretary's directions.

[From the New York Times, June 24, 2001]

THE WORLD: FREE TRADE'S PROMISE IN LATIN AMERICA; THE POOR SURVIVE IT ALL.
EVEN BOOM TIMES

(By Anthony DePalma)

For months now, President Bush has been asking Congress for something really big: authority to negotiate the largest free trade agreement the world has ever seen, one that would create a market of 800 million people in the Americas, from the Arctic to Antarctica. In exchange, he has promised that the trade zone will not only create markets for the United States, but will fortify democracy in Latin America and spread the economic benefits equitably.

Last week, it became clear he has a big fight ahead. The capital was flooded with critics who fear the deal's impact on workers' rights and environmental standards, and supporters eager for bigger markets and increased economic opportunities.

But their debate barely touches a far more fundamental question: does the combination of democracy and free enterprise guarantee achievement of the larger goal—higher living standards? In Latin America, the answer often is no.

On the surface, descriptions of trade, democracy and shared prosperity as inevitably linked represent a logical bind for the Bush administration. The Western Hemisphere already is more politically democratic than ever; excluding Cuba, every nation has an elected government. And the markets have never been more open; most governments have sold state-owned businesses, cut tariffs and torn down other walls that protected national industries.

What has this produced? According to the United Nations Economic Commission for Latin America and the Caribbean, an enormous number of Latin Americans—224 million of them—live in poverty. They represent roughly 36 percent of the population—an improvement from the 41 percent who were considered poor in 1990, but higher than the 35 percent so defined in 1980.

More perilous for social peace, Latin America maintains the broadest gap between rich and poor in the world, and the gap has narrowed only marginally, if at all, from what it was under the generals, dictators and caudillos.

To some Latin American scholars, the linking of democracy, trade and shared prosperity suggest that Mr. Bush and many Latin American leaders are out of touch with reality. "These guys are just whistling Dixie," said Riordan Roett, director of the Western Hemisphere program at the Johns Hopkins University School of Advanced International Studies. "They're ignoring the basic issues that everyone's been pointing out to them for a decade."

The most effective way to ensure a fairer distribution of the economic benefits of market openings, according to Professor Roett and many other experts, is by improving education. Greater skills translate directly into higher wages. But only 15 percent of Latin American children make it to the ninth grade, even though spending on education has increased in at least 13 nations.

The increases tend to be less effective than they might be because Latin American governments spend disproportionately on universities—a strategy aimed at mollifying politically active middle class students.

And that kind of spending decision underlines a basic problem throughout Latin America: the way to fairer distribution of wealth is known, but the will to make the necessary changes gets waylaid between the people and their governments.

Nobody expects miracles overnight. Economic ministers in Latin America always counter reports of current problems with references to how bad things were before, and they usually are right. But their critics say they miss a crucial point. The region's rigid social structure isn't equipped to equitably distribute wealth, and this has been true whether a society was a democracy or an autocracy, protectionist or free-trading.

As Mexico learned when it abandoned protectionism in the 1980's and 90's, capitalism unbound puts lower-wage people at the mercy of global market forces. In order to counteract those forces and create more winners than losers, a nation needs strong democratic institutions—a sound judiciary, free media and officials who are responsive to voters.

Far too often, however, Latin America's fledgling democracies have been too weak to effectively defend against such elite forces. For example, the elected governments of countries like Guatemala did little to stand in the way as the rich amassed tremendous wealth, allowing a coalition of agricultural growers and financial groups to block tax reforms. In Ecuador several years ago, so many rich people were evading income taxes that the government just abolished them, putting a tax on financial transactions instead.

In such cases, checks and balances intended to hold officials accountable don't function; policy decisions are based on their impact on the powerful few, not on the poor majority.

And so, even after decades of market opening and democratic elections, the richest 10 percent of Guatemalans and Brazilians control almost half of their national incomes, while the bottom 50 percent have access to just 10 percent of the wealth. Chile, Uruguay and, until recently, Argentina have had fairly sophisticated and stable economies, but they too have barely narrowed the wealth gap.

In fact, over the last 40 years, the most effective efforts to bridge the gap took place under populist authoritarian governments that rejected both democracy and free trade. They erected protectionist barriers that kept vast numbers of people employed, but not productively. The governments made up for shortfalls by borrowing heavily from foreigners. The system worked, but only for a while. It led to the debt crisis of the 1980's, which worsened income inequity. The region recovered in the early 90's but most of the progress was wiped out by Mexico's debt crisis of 1994-95.

The region's economies climbed back again, but as they did something else occurred. The economic restructuring intersected with democratic opening in many countries, creating unforeseen new pressures. Competing globally meant becoming more productive, which brought layoffs. New standards of openness forced the governments to reveal economic data on once-guarded items like foreign cash reserves. This cleared the way for newly liberated news outlets to investigate corruption on every level.

The result? "People now see the corruption and the problems with education, health and judicial impunity, and they think that is democracy," said Cesar Gaviria, a former president of Colombia who is secretary general of the Organization of American States. "All of that has created a sense of skepticism about democracy."

That disenchantment has put democracy itself at risk, and some Latin American intellectuals fear that the door has opened for the region to return to what the Mexican writer Carlos Fuentes has called the area's "oldest and most deeply rooted tradition—authoritarianism."

The stirrings of such a shift are already evident. Using resentment against the maldistribution of wealth in Venezuela, Hugo Chavez led an unsuccessful coup attempt in 1991. A few years later, he won the presidential election and began dismantling parts of Venezuela's constitutional system that he said were unresponsive to the masses.

A coup in Ecuador last year was a backlash, in part, against the country's economic morass and a decision to adopt the American dollar as Ecuador's currency. After international pressure forced the generals to surrender control, the new president promised to work to distribute economic benefits equitably. But one of his first moves was to complete dollarization, which helped businesses but not the poor.

And in last year's historic election in Mexico, perceptions that economic opening had enriched a few families while leaving most Mexicans in poverty helped to oust the ruling party that had controlled the presidency for seven decades. This victory for democracy could prove a tenuous one; sustaining the victory may well depend on President Vicente Fox's ability to persuade most Mexicans that they too are benefiting from free trade.

Mexico, Ecuador and Venezuela were among the 34 nations at the recent Summit of the Americas in Quebec, which voted to limit participation in future summits—and perhaps the proposed Free Trade Area of the Americas that the Bush administration supports—to democracies.

But critics of such a simple linkage say it is not merely a democratic constitution and elections that determine the fairness of a society, but how deeply democratic understandings reach into the culture. Hernando De Soto, the Peruvian economist whose ideas have influenced public policy in the region, believes that raw capitalism has trumped principles of fairness in Latin America because many of the region's democracies haven't developed completely.

"LATIN Americans get to choose their leaders, but once they are in place, it's the old cliques that make the bottom-line decisions that are suitable to their own needs, not the people's needs," said Mr. De Soto. Latin American newspapers commonly refer to "the arrival of democracy" after elections, but the process doesn't end there.

"These nations may look like democracies and sound like democracies," said Mr. DeSoto, "but they certainly do not function in the same way that true democracies function."

PREPARED STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA

Good Morning. I want to thank Chairman Hollings for moving swiftly in scheduling this nominations hearing so early in his reinstated role as Chairman of the Committee. I know the Administration and in particular, the pending nominees, are very appreciative of his leadership, and am hopeful the Committee and full Senate can work to move your nominations quickly.

We will be considering the nominations of three individuals who are being considered for positions with the Department of Transportation (DOT). They are Mr. Kirk Van Tine to be General Counsel of the DOT, Mr. J. Allan Rutter, to be Administrator of the Federal Railroad Administration (FRA), Ms. Ellen Engleman, to be Administrator of the Research and Special Programs Administration (RSPA). We will also consider the nomination of Mr. Samuel Bodman to be Deputy Secretary of the Department of Commerce.

The positions for which these individuals have been nominated are important. For example, one only needs to see a telecast of a run-away train or hear about a tragic pipeline explosion to understand the importance of ensuring the Administrators of the FRA and RSPA are highly capable. While times of tragedy most often reminds us of these modal agencies, they are responsible for carrying our important safety missions at all times.

The DOT General Counsel position is essential to assisting the Secretary in carrying out our nation's federal transportation policies and ensuring the Department's actions are in full compliance with the law. The General Counsel's duties are far-reaching, overseeing the Department's entire legal department, aiding in the sound development of legislative submissions and fulfilling statutory intent through the timely completion of Departmental rules and regulations.

And finally, the Deputy Secretary of the Department of Commerce plays a key role the day-to-day management of that Department. In addition to the management of approximately 40,000 Federal employees, the Deputy is responsible for the policy implementation of a wide range of issues, including international trade, economic growth, scientific research and development, patents and trademarks, telecommunications, weather forecasting, fisheries, and the census.

I would like to take this opportunity to thank the nominees for being here today. I know your nomination is a great honor, and that your families are very proud.

